

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF OREGON

3 Portland Division

4
5 IN THE MATTER OF THE)
6 EXTRADITION OF)

) Case No. 11-MC-09097-ST

7 RASEMA HANDANOVIC,)
8 aka "ZOLJA,")

) September 29, 2011

aka SAMMY RASEMA YETISEN,)

) Portland, Oregon

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12 TRANSCRIPT OF PROCEEDINGS

13 THE HONORABLE JANICE M. STEWART

14 UNITED STATES MAGISTRATE JUDGE

15 EXTRADITION HEARING
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Proceedings - 9/29/11

(September, September 29, 2011)

TRANSCRIPT OF PROCEEDINGS

(In open court:)

DEPUTY COURTROOM CLERK: All rise. The United States District Court for the District of Oregon is now in session. The Honorable Janice M. Stewart presiding. Please be seated.

MR. ATKINSON: Good morning, Judge Stewart. David Atkinson on behalf of the United States. This is: In the Matter of the Extradition of Rasema Handanovic under Miscellaneous Case No. 11-MC-0907.

With me at counsel table is Frances Chang from the Office of International Affairs, a component of the Department of Justice. And the case agent assigned to this case is Theodore Weimann of Immigration and Customs Enforcement.

I would like to introduce you to Ms. Chang. And she's appeared in this case formally and is on the various pleadings for the Government.

The defendant is in custody and with counsel, Lisa Hay, of the Federal Defender's Office. This is the date and time set for the extradition hearing in this case. The United States is ready.

THE COURT: Ms. Hay.

MS. HAY: Good morning, Your Honor.

1 THE COURT: Good morning.

2 MS. HAY: Your Honor, we've all submitted a great
3 number of briefs in this case already. I don't know if the
4 Court has a proposed order of how we should go through some
5 of the various arguments.

6 THE COURT: Well, I will start with the
7 Government, since the Government has the burden here on its
8 request for extradition.

9 Before we get started on the issues concerning
10 extradition, I notice that you have filed a new motion for
11 release of your client. Because it was just filed yesterday
12 or the day before, it was not clear to me that it should be
13 addressed today, because I was not aware of how long the
14 Government might request in order to respond to that, so I
15 suggested that you bring your calendars with you today so we
16 can set a hearing date.

17 What's your position on whether we should get --
18 can or should address that today, Mr. Atkinson, or whether
19 you would like to do that on a later date?

20 MR. ATKINSON: Counsel and I conferred,
21 Judge Stewart, and Counsel suggests the hearing date be set
22 for October 20th.

23 THE COURT: Okay. So you both agree that works
24 for your calendars?

25 MR. ATKINSON: Yes.

1 THE COURT: All right.

2 MR. ATKINSON: I'd ask to be given until close of
3 business next Wednesday, the 5th, to file a written
4 response. It will give the Court essentially two weeks for
5 the Government's response. A little longer.

6 THE COURT: That's fine. I'll set a date, then,
7 of October 5 for the Government's response to a renewed
8 motion for release. October 20 is available for me for a
9 hearing date. Do you want to set this at 1:30, or would you
10 like to have an earlier time? I'm available all day, so
11 whatever works best for counsel is fine with me.

12 MS. HAY: I think the morning is probably better
13 if I bring an expert, Your Honor, just thinking of their
14 schedule, so I would ask in the morning, at 9:30.

15 THE COURT: Mr. Atkinson?

16 MR. ATKINSON: That's satisfactory.

17 THE COURT: I'll set the release hearing on
18 Thursday, October 20, at 9:30 a.m. I'll keep the entire
19 morning available for that if you intend to call witnesses.

20 All right. And do you anticipate, Ms. Hay, that
21 you would want to file a reply to the Government's response
22 before the hearing?

23 MS. HAY: Yes, Your Honor. In my motion I filed
24 now, I just repeated the same law that we had used earlier,
25 because I recognized the Government wouldn't have a chance

1 to respond to that, so I would like a chance to update that
2 law.

3 In addition, I most likely will have some
4 additional witness statements that I can provide in advance
5 so that the Government and the Court could read those by
6 the -- before the hearing.

7 THE COURT: We'd like to have that done at least a
8 couple of days before the hearing. The Government's
9 response is coming in on October 5. How about -- would
10 Friday the 14th be too soon for you?

11 MS. HAY: No, that would be fine, Your Honor.

12 THE COURT: All right. We'll do any reply by
13 Ms. Handanovic by Friday, October 14. Okay. All right.

14 All right. That takes us, then, to the
15 Government's request for extradition. As I say, it's the
16 Government's request. I have, of course, received
17 substantial briefing from both sides in advance of this
18 hearing, which has been, of course, very helpful. I've
19 reviewed all that and have read the cases that you cited,
20 and, obviously, there are a number of issues that we need to
21 address at this morning's hearing.

22 So since it is the Government's request,
23 Mr. Atkinson, I'll hear from you first.

24 MR. ATKINSON: Thank you.

25 THE COURT: And, as I say, I have -- I'm familiar

1 with the issues, so if there's some that you don't think you
2 need to argue at this point because you think you've briefed
3 it well enough, that's certainly fine with me.

4 MR. ATKINSON: Sure. Judge Stewart, I'm going to
5 attempt to be as efficient as I can.

6 THE COURT: Okay.

7 MR. ATKINSON: And, to begin with, let me explain
8 to you the Government's exhibits. We will call a witness to
9 sponsor in a few of the exhibits.

10 THE COURT: Okay.

11 MR. ATKINSON: I've provided the Court and Counsel
12 with a copy of a witness list and the exhibits that the
13 Court may -- well, that we'll be offering in other than the
14 original extradition request and supplements which were
15 certified by the Ambassador in one instance and the
16 principal counselor office officer in the other four or five
17 instances.

18 Those are bound documents that were filed with the
19 Court in support of the complaint. And a couple of
20 additional documents from the Embassy came in. I filed
21 those with the Court, as well. I made sure that Counsel had
22 copies.

23 If you look at the exhibit list, you'll see that
24 Exhibits 4 through 9 make reference in -- parenthetical
25 reference to the tab numbers in the notebook that I've

1 supplied to the Court and Counsel. I haven't included
2 copies of those in the manila folder containing the exhibits
3 because both the Court and Counsel already have copies.

4 THE COURT: Those originals have already been
5 filed?

6 MR. ATKINSON: They'll be filed, and I'll be
7 offering them here shortly.

8 THE COURT: Okay.

9 MR. ATKINSON: I'll waive an opening statement and
10 I'll proceed to call my first witness.

11 THE COURT: Very well.

12 Then, Ms. Hay, do you have anything you want to
13 put on the record before we begin receiving evidence?

14 MS. HAY: No, Your Honor.

15 THE COURT: All right. Mr. Atkinson?

16 MR. ATKINSON: Theodore Weimann.

17
18 THEODORE HARRISON WEIMANN

19 called as a witness in behalf of the Movant, being first
20 duly sworn, is examined and testified as follows:

21
22 DEPUTY COURTROOM CLERK: Please be seated and
23 please state your name and spell your last name for the
24 record.

25 THE WITNESS: Theodore Harrison Weimann,

1 W-E-I-M-A-N-N.

2 DEPUTY COURTROOM CLERK: Thank you.

3
4 DIRECT EXAMINATION

5 BY MR. ATKINSON:

6 Q. Provide us with a very brief background, if you would,
7 Mr. Weimann, of your educational background, in a sentence
8 or two, and your current employment.

9 A. I have a bachelor of science degree and followed by
10 quite a bit of training by the Government. And my
11 employment with the Government has been as a special agent
12 with the Immigration Naturalization Service in 1987 until
13 the merger with the U.S. Custom Service in 2003.

14 Since then I've been a special agent with ICE,
15 Immigration and Customs Enforcement.

16 Q. Are you the case agent assigned to this case?

17 A. Yes, I am.

18 Q. I want to draw your attention to Government's Exhibit
19 No. 1. I'm going to ask you if you recognize that exhibit.

20 A. Yes, I do.

21 Q. What is it?

22 A. It's a printout from the Department of State's website
23 about the key officers of our embassy in Bosnia.

24 Q. Is our Embassy in Bosnia a single-post embassy?

25 A. Yes, it is.

1 Q. And you checked and researched that and affirmed that?
2 Is that correct?

3 A. Yes, it is.

4 MR. ATKINSON: Government offers Exhibit No. 1.

5 THE COURT: Any objection?

6 MS. HAY: No, Your Honor.

7 THE COURT: Exhibit No. 1 is received.

8 MR. ATKINSON: I'll ask the Court to note that
9 about halfway down on the first page that Anne-Marie Casella
10 is counsel -- or consul, I should say -- C-O-N-S-U-L -- at
11 that single-post embassy. This website lists the key
12 employees in the Embassy and she is the only one listed as
13 consul.

14 THE COURT: So noted.

15 BY MR. ATKINSON (Continuing)

16 Q. Government's Exhibit No. 2. Please identify that.

17 A. That's a string of emails from myself to a Department
18 of State employee in Seattle, forwarded on to Ms. Casella
19 and our Embassy in Bosnia.

20 Q. Anne-Marie Casella, whose name is mentioned in the
21 previous exhibit?

22 A. Same one.

23 Q. So this is your personal correspondence with her, is
24 that correct, through a Department of State employee?

25 A. Yes, it is.

1 MR. ATKINSON: Government offers 2.

2 THE COURT: Any objection?

3 MS. HAY: No, Your Honor.

4 THE COURT: Exhibit 2 is received.

5 MR. ATKINSON: I'd ask the Court to note the text
6 of the email from Ms. Casella through the Department of
7 State employee in Seattle to Agent Weimann confirming that
8 she's the principal counselor officer in the Embassy at
9 Sarajevo, Bosnia.

10 THE COURT: So noted.

11 BY MR. ATKINSON (Continuing)

12 Q. Now, was there an attachment that she submitted to the
13 email?

14 A. Yes. The attachment was part of the email. That's
15 correct.

16 Q. Has what been marked as Exhibit 3?

17 A. Yes, it has.

18 Q. And that's an excerpt from the Foreign Affairs Manual,
19 essentially authoritative text or source for Department of
20 State employees; is that correct?

21 A. Yes, it is.

22 MR. ATKINSON: Government offers 3.

23 THE COURT: Any objection?

24 MS. HAY: No.

25 THE COURT: Exhibit 3 is received.

1 MR. ATKINSON: I'd ask the Court to note,
2 specifically on page 3 and 4, starting at paragraph E, at
3 the bottom of page 3, the procedures that are used for the
4 certification of documents in connection with extraditions.

5 THE COURT: All right. So noted.

6 MR. ATKINSON: And F, on the next page, as well.

7 THE COURT: Yes, I see that.

8 MR. ATKINSON: All right. The Government offers
9 its Exhibit 3.

10 THE COURT: That's been received.

11 MR. ATKINSON: 4, 5, 6, 7, 8, and 9.

12 THE COURT: Okay. And Exhibits 4 through 9, as
13 you previously indicated, were also provided to the Court
14 and opposing counsel in tabs 1 through 15?

15 MS. HAY: Right. I don't object to those, 4
16 through 9, Your Honor.

17 THE COURT: Very well. I will receive -- in
18 addition to Exhibits 1 through 3, I will receive Exhibits 4
19 through 9.

20 BY MR. ATKINSON (Continuing)

21 Q. Would you take a look at Exhibit 10, please. Is that
22 what we refer to in the pleadings as the Dean affidavit?

23 A. Yes, it is.

24 Q. Did you personally speak with Paul Dean about Exhibit
25 10?

1 A. Yes, I did.

2 Q. Did he confirm for you that he was an assistant legal
3 advisor for Treaty Affairs for the United States in the
4 Office of Treaty Affairs and the Department of State?

5 A. Yes, he did.

6 Q. Did he reaffirm to you over the telephone each and
7 every one of the provisions in his affidavit?

8 A. Yes, he did.

9 MR. ATKINSON: Government offers 10.

10 THE COURT: Do you have any objection?

11 MS. HAY: Well, Your Honor, this is the one that I
12 objected to in my last brief as not actually being an
13 affidavit. This is a declaration. But an affidavit is
14 required to be sworn to be true under the pains and
15 penalties of perjury. I made that objection. I'll continue
16 that objection; that it's not an affidavit, for what it's
17 worth, and it should not be considered submitted for that
18 purpose.

19 THE COURT: I agree with you that it is not sworn
20 as an affidavit. It is technically a declaration. It also
21 doesn't say it's sworn to under the penalty of perjury.

22 As you know, in an extradition hearing hearsay
23 evidence is admissible because it's in the nature of a
24 probable cause hearing, so I will receive Exhibit 10, but
25 we'll note that it is not sworn under oath.

1 BY MR. ATKINSON (Continuing)

2 Q. Exhibit 11. Would you identify that, please.

3 A. This is the conclusion by the ICE forensic fingerprint
4 examiner.

5 Q. Okay. Did you submit to the fingerprint examiner,
6 Mr. Roan, rolled fingerprints taken from the defendant -- or
7 the fugitive in this case, Ms. Handanovic, upon her arrest,
8 by the U.S. Marshal Service?

9 A. Yes, I did.

10 Q. Did you also submit to the fingerprint examiner rolled
11 prints that had been -- that were contained within her
12 immigration file?

13 A. Yes, I did.

14 Q. And that immigration file corresponds to the defendant
15 in this case, does it not?

16 A. Yes, it does.

17 Q. Or the fugitive, I should say, in this case,
18 Ms. Handanovic. Is that correct?

19 A. Yes.

20 Q. Were you present when she was arrested?

21 A. I was.

22 Q. Was she arrested and residing, at the time of her
23 arrest, here in the District of Oregon?

24 A. Yes, she was.

25 Q. What can you state about fingerprints of an immigrant

1 that are maintained in the -- the agency's -- your agency's,
2 immigration file?

3 A. Well, fingerprints are taken at different stages of
4 processing, depending on, for instance, how the person -- or
5 what's the purpose of that immigration file. In
6 Ms. Handanovic's example, she was -- had applied for refugee
7 status and then for lawful permanent resident status, and,
8 as a result of that, fingerprints were taken, and they're
9 maintained permanently in her immigration file.

10 Q. And that's routinely kept in connection with the file;
11 is that correct?

12 A. Yes.

13 MR. ATKINSON: Government offers 11.

14 THE COURT: Any objection?

15 MS. HAY: No objection.

16 THE COURT: Received.

17 MR. ATKINSON: And with respect to Exhibit 12 -- I
18 contend Exhibit 12 is self-authenticating, Your Honor. It
19 is a public record, and you have a certificate of the
20 custodian of records, Ms. Sierakowski.

21 THE COURT: All right. These are records of the
22 Citizen and Immigration Service file concerning
23 Ms. Handanovic; is that correct?

24 MR. ATKINSON: Yes.

25 THE COURT: Any objection to Exhibit 12?

1 MS. HAY: No objection.

2 THE COURT: All right. It's received.

3 MR. ATKINSON: You may inquire.

4

5 CROSS-EXAMINATION

6 BY MS. HAY:

7 Q. Mr. Weimann, you also provided to the defense a copy of
8 Ms. Handanovic's immigration file; is that correct?

9 A. Yes, it is.

10 Q. Do you recall that one of the documents in there was a
11 travel -- refugee travel document?

12 A. Yes, I did.

13 MS. HAY: Your Honor, may I approach the witness?

14 THE COURT: Yes.

15 BY MS. HAY (Continuing)

16 Q. I'll show you what's been marked Defendant's
17 Exhibit 104 and 105 for identification.

18 Do those appear to be some of the documents from
19 the immigration file that you provided to the defense?

20 A. Yes. I've seen both of these in her file.

21 Q. Defendant's Exhibit 104, is that a document showing
22 that Ms. Handanovic applied for travel authorization in
23 1997?

24 A. Yes, it does.

25 Q. And she applied to go to Croatia; is that correct?

1 A. That's correct.

2 Q. In Defendant's Exhibit 105, does that show that --
3 plane tickets of Ms. Handanovic showing her flight to
4 Zagreb?

5 A. Yes.

6 Q. In 1997?

7 A. 1998. Oh, excuse me. Return in '98.

8 Q. So left in 1997; returned two months later, in 1998?

9 A. That's correct.

10 Q. And those are both part of the official file kept by
11 U.S. Immigration?

12 A. Yes, they are.

13 Q. And that's because she was required to report to the
14 Government when she wanted to travel?

15 A. Overseas, correct.

16 MS. HAY: Your Honor, I would offer for admission
17 Defendant's 104 and 105.

18 THE COURT: Okay. These are documents that are
19 not contained in Exhibit 12; is that correct?

20 MS. HAY: I was just scanning Exhibit 12 and
21 didn't see them in here. So I can't say for certain they're
22 not there, but they would have been part of that same file
23 if it were not an excerpt.

24 THE COURT: All right. Does the Government have
25 any objection?

1 MR. ATKINSON: No, Your Honor.

2 THE COURT: Exhibits 104 and 105 are received.

3 MS. HAY: No further questions, Your Honor.

4 THE COURT: All right. Any --

5 MR. ATKINSON: No further questions.

6 THE COURT: Thank you. You may step down.

7 MR. ATKINSON: The Government rests.

8 THE COURT: All right. Ms. Hay, do you have any
9 evidence you wish to submit?

10 MS. HAY: Your Honor, on the question of the
11 Government's proof that Ms. Handanovic intended to flee
12 Bosnia in order to flee an indictment or investigation, the
13 Government's rested without presenting any evidence of that.
14 I believe, given the evidence I've just put in, that
15 Ms. Handanovic, in fact, returned to her home country in
16 1997, before the statute of limitations would have passed,
17 tolled the Government she was doing that, and then returned,
18 the Government has not met its burden of showing that the
19 statute of limitations was tolled under the fugitive -- the
20 fugitive doctrine.

21 In this case, I do have some additional evidence
22 that I could just present. These are reports -- one from
23 the Subcommittee on International Operation of Human Rights
24 about refugees. It shows that in 1995 and in 1997 there
25 were approximately a million refugees from Bosnia leaving

1 that country and going to other countries. That -- the
2 numbers are different. One document, which is marked as
3 Defendant's Exhibit 102, says there's 1.2 million refugees
4 in 1995 leaving Bosnia. The Subcommittee on International
5 Operations on Human Rights, which I've marked as Defendant's
6 Exhibit 103, reports the numbers in different ways. But
7 they have approximately 800,000 refugees that they mention.

8 And then a document from the United Nations I've
9 marked as Defendant's Exhibit 101. They -- it reports that
10 by the end of 1997 more than 800,000 Bosnians remained
11 internally displaced; more than 600,000 were without durable
12 solutions outside the country.

13 Your Honor, I would offer all of theses in the
14 same extent that the Government has offered in their
15 pleadings. Just to show that many, many people fled from
16 Bosnia as a result of the war and that Ms. Handanovic's
17 decision to leave Bosnia in 1995 had no bearing at all on a
18 thought that she was fleeing from any kind of investigation
19 or possible prosecution.

20 So I'd offer these documents, Your Honor, as
21 just -- I think the Court can take notice of the --
22 especially the hearing in front of the Senate Subcommittee
23 on Refugees; that there were certainly hundreds of thousands
24 of refugees leaving Bosnia at the same time.

25 THE COURT: Does the Government have any objection

1 to Exhibits 101, 102 and 103?

2 MR. ATKINSON: No, Your Honor.

3 THE COURT: All right. I will receive those.

4 We can leave for argument with sufficiency of the
5 evidence on this particular point.

6 MS. HAY: I don't have any further witnesses to
7 present then, Your Honor.

8 THE COURT: All right. So do we now have in the
9 record all of the written documentation and testimony that
10 both parties intend to present at today's hearing?

11 Mr. Atkinson, on behalf of the Government?

12 MR. ATKINSON: Yes, Your Honor.

13 THE COURT: Ms. Hay?

14 MR. ATKINSON: I will ask the Court to note
15 certain additional matters, but we will do that in the
16 course of argument.

17 THE COURT: All right.

18 MS. HAY: Actually, Your Honor, it occurs to me
19 that maybe I ought to call one witness, just further, about
20 this trip to Zagreb. If I could call Mirsada Guild for
21 brief testimony.

22 THE COURT: Very well.

23 DEPUTY COURTROOM CLERK: Please raise your right
24 hand.

25

MIRSADA GUILD

called as a witness in behalf of the Respondent, being first duly sworn, is examined and testified as follows:

DEPUTY COURTROOM CLERK: Please be seated. Please state your name and spell your name for the record.

THE WITNESS: My name is Mirsada Guild. First name is Mirsada, M-I-R-S-A-D-A. Guild, G-U-I-L-D.

DEPUTY COURTROOM CLERK: Thank you.

DIRECT EXAMINATION

BY MS. HAY:

Q. Ms. Guild, how are you related to the defendant in this case, Rasema Handanovic?

A. I'm her sister.

Q. Did you provide a statement that was submitted to the Court as Exhibit 2, a letter about your past with Ms. Handanovic?

A. Yes, I did.

MS. HAY: Your Honor, I'm referring to Exhibit 2 to the defendant's motion for release from custody.

THE COURT: All right.

BY MS. HAY (Continuing)

Q. And are the statements in that letter true?

A. They're true.

1 Q. Ms. Guild, after the -- during the war in Bosnia,
2 where -- where did you go when you left Bosnia?

3 A. We fled first to Croatia. And since it wasn't safe for
4 me, we moved further, to Germany.

5 Q. In 1997 did you have a chance to see your sister again?

6 A. Yes.

7 Q. Okay. Tell us, where did you meet up with your sister
8 in 1997?

9 A. We met back at our parents' house. The whole family
10 met for first time since after September 2nd, 1992.

11 Q. So September 2nd, 1992, you were separated?

12 A. Yes.

13 Q. And then the next time you got to meet was in 1997?

14 A. We met in Germany, actually, in '94. It was, I think,
15 November of '94.

16 Q. Okay.

17 A. It was when she was sent for recovery and -- for two
18 months from -- she was released by Bosnian Army for two
19 months. And she went back. And then we met again, whole
20 family -- whole family get together in November of 1997.

21 Q. And what town did you get together in?

22 A. Sanki Most.

23 Q. And that's your hometown in Bosnia?

24 A. Yes.

25 Q. How did you get to Sanki Most?

1 A. I drove in my car.

2 Q. And do you know how your sister got there?

3 A. She flew to Zagreb. Zagreb was the closest airline --
4 airport to our town.

5 Q. And then went from Zagreb to Sanki Most?

6 A. Yes. My brother picked her up from airport.

7 Q. Have you been back in Bosnia with your sister again at
8 any other time?

9 A. We went back to 2003 when I got married.

10 Q. Did you get married in your hometown?

11 A. Yes.

12 Q. And your sister was back there for your wedding?

13 A. She came for my wedding.

14 MS. HAY: No further questions. Your Honor.

15 THE COURT: Any cross-examination?

16

17 CROSS-EXAMINATION

18 BY MR. ATKINSON:

19 Q. Did you -- after you were separated from your sister in
20 1992, did you stay in touch with her?

21 A. We -- I saw her back when she came to Germany, and it
22 is when I --

23 Q. That was in '94; right?

24 A. '94, yes.

25 Q. Pardon me for interrupting.

1 A. Yeah.

2 Q. Other than that, were you able to stay in touch with
3 her? How were the two of you able to communicate so that
4 you could meet in Germany in '94?

5 A. Well, it was through my parents. She -- it is how she
6 got in touch with my parents. I had separated in Germany
7 from my parents, so I was separated from my parents in
8 Germany.

9 Q. She was a member of the Bosnian Army during the
10 hostilities in Bosnia from '92 to '95, was she not?

11 A. She was military.

12 Q. Yeah. She was discharged from the Army in May of 1995,
13 wasn't she?

14 A. It was in '95 sometime. I cannot --

15 Q. She fled to Austria in August of '95, didn't she?

16 MS. HAY: Objection to the word "fled,"
17 Your Honor.

18 THE COURT: Sustained.

19 BY MR. ATKINSON (Continuing)

20 Q. She moved to Austria in August of 1995, didn't she?

21 A. She was on her way to family, to Germany, and at that
22 time Germany closed the borders, and it is where she ended
23 up staying, in Austria.

24 Q. In Austria?

25 A. Yeah.

1 Q. Were you aware that she sought refugee status in the
2 United States in October of 1995?

3 A. I don't understand.

4 Q. Did she seek to become a refugee and immigrate to the
5 United States in October of 1995?

6 A. Did she seek -- what do you mean by --

7 Q. Did she apply to become a -- to come to the United
8 States as a refugee in October of '95?

9 A. She was -- yeah, she came to -- because we have a -- we
10 have another sister that lives in Portland, and it is the
11 only family that she could be reunited --

12 Q. And she actually moved to the United States as a
13 refugee in May of '96, didn't she?

14 A. I think so.

15 Q. She currently goes by the first name Sammy; is that
16 right?

17 A. She always went by -- it is like name we always call
18 her, Sammy.

19 Q. She didn't call her Zolja?

20 A. I don't know what this is.

21 Q. You never heard of the nickname Zolja?

22 A. Zolja? No.

23 Q. She had her name legally changed to Sammy by order of a
24 judge in this court, here, in this courthouse, didn't she?

25 A. When you become citizen, anybody has the right to

1 change name. It is common that immigrants change into name,
2 but she just made official the name that she used in the
3 past.

4 Q. And her last name changed by marriage --

5 A. That's correct.

6 Q. -- did it not?

7 Yes, okay.

8 MR. ATKINSON: I'll save the rest for argument,
9 Your Honor. No further questions.

10 THE COURT: All right.

11 MS. HAY: No follow-up.

12 Thank you, Your Honor.

13 THE COURT: Very good. You may step down.

14 Any other witnesses on behalf of Ms. Handanovic?

15 MS. HAY: No, Your Honor.

16 THE COURT: All right. I think that then
17 concludes the evidence, so let's hear argument on the
18 various issues raised in the memoranda.

19 So, Mr. Atkinson, you first.

20 MR. ATKINSON: Thank you.

21 THE COURT: Let me say, initially, that I know one
22 of the challenges raised is to the validity of the treaty.
23 I think, based on the cases that you've cited, I am
24 persuaded by your position, so I don't need to hear any more
25 argument from you on that particular issue.

1 So if you want to address your argument primarily
2 to the other issues, that would be helpful.

3 MR. ATKINSON: All right. Your Honor, I'm going
4 to start at a fairly basic level, but I'll move through this
5 fairly quickly, and I'll try not into waste the Court's time
6 or Counsel's time.

7 In the original memoranda that we filed back just
8 before the defendant was arrested, a copy of which was made
9 available to counsel upon her arrest, we set out the five
10 matters that we need to prove in order to sustain a
11 certification to the Secretary of State for extradition.

12 Those are as follows: Number one, that the
13 judicial officer handling the case has the authority to
14 conduct the proceedings. And you have that authority
15 pursuant to 18 U.S.C. §3184. I don't think there's any
16 serious contention to the contrary.

17 Secondly, we need to prove you have jurisdiction
18 over the fugitive. And the same statute, 18 U.S.C. §3184,
19 provides that you have jurisdiction over alleged fugitives
20 residing in this district or arrested in this district.

21 Hence, my question to Agent Weimann about where
22 Ms. Handanovic was arrested.

23 The third is a matter no longer in dispute;
24 whether the treaty is in effect.

25 Four, which is probably the matter in most

1 dispute, is whether the crimes charged in the requesting
2 jurisdiction are covered by the applicable treaty.

3 And the final matter we need to prove is that
4 there's probable cause as to the crime charged in the
5 requesting jurisdiction. In this case, Bosnia.

6 The argument following the validity of the treaty
7 argument raised by the defendant, or the fugitive in this
8 case, contends that she is not charged in the requesting
9 state. And in her initial memorandum that argument had two
10 facets. The first was that there was a technical defect in
11 the warrant; that there was essentially a scrivener's error.
12 And Exhibits 8 and 9 constitute the amended warrant that
13 we've offered into evidence, that are now received, that
14 have corrected those errors.

15 I want to point out for the Court that there are
16 multiple references to the defendant's biographical data in
17 the extradition request -- in a formal extradition request
18 from Bosnia.

19 I've listed all of those out on pages 15 and 16 of
20 our original response. There are eight or nine different
21 places where her date of birth is referenced, her birthplace
22 is referenced, name of her father is referenced. There are
23 multiple affirmations of that in documents here in the
24 United States, as well; her marriage certificate, her
25 naturalization certificate. The fingerprints clearly

1 establish that she is the person who's wanted in Bosnia,
2 despite the fact that the fingerprint examiner wasn't able
3 to complete an exact match of the roll prints taken upon her
4 arrest here in Oregon with the prints that were taken in
5 Bosnia while she was in Bosnia.

6 But given her immigration file and the fact that
7 the examiner was able to make the match to the prints
8 contained in her immigration file and given the fact that
9 the immigration file is replete in multiple locations, as
10 detailed in our memoranda, with references to her date of
11 birth, her lineage, the -- all of her biographical data, and
12 that matches exactly the person wanted by Bosnia, I submit
13 that the validity of the warrant is just not an issue
14 anymore.

15 I didn't see Ms. Handanovic raise that in her
16 reply document. I don't know whether she's abandoned it or
17 not. I'll save any further argument on that for rebuttal.
18 But our contention is that we presented a valid warrant.

19 And, moreover, that there are two warrants within
20 the extradition paperwork. One issued by Judge Jukic behind
21 one of the tabs, a judicial -- an independent judicial
22 determination of probable cause and an order for her arrest,
23 which independently satisfies the warrant requirement of
24 Article -- I believe it's Article IV of the treaty.

25 I'm sorry. Article I of the treaty.

1 The more -- the argument that Ms. Handanovic has
2 continued or persisted to press is that because she has not
3 been formally charged in Bosnia -- that is indicted -- the
4 requirement of Article I of the treaty, that as a condition
5 precedent to extradition the fugitive be charged with or
6 convicted of a listed offense hasn't been met.

7 In response to that argument, I contend as
8 follows: Number one, that *Emami* -- E-M-A-M-I, for the
9 benefit for the reporter -- case is binding Ninth Circuit
10 precedent that directly applies to this case.

11 Emami, in turn, quotes extensively from and relies
12 extensively upon a companion Seventh Circuit case that had
13 been previously cited, the *Assarsson* case.

14 A-S-S-A-R-S-S-O-N. Also cited in the memoranda.

15 The effect of those cases is that formal charges
16 or indictments are not -- simply not required in order to
17 satisfy the "charge with" element of Article I of the
18 treaty. If there's been a warrant issued for someone's
19 arrest, that will suffice to predicate an extradition
20 without requiring the requesting state to submit formal
21 charges.

22 The treaty in *Assarsson*, the *Assarsson* case, a
23 Seventh Circuit case, had language, Judge Stewart, that was
24 absolutely identical to Article I of our treaty. That
25 condition precedent extradition be that the person charged

1 with or convicted of a listed offense.

2 The *Assarsson* court interpreted that to mean that
3 the person be accused but not formally charged. We quoted
4 in both of our memoranda about the transmutation of "charge
5 with" from a verb to a noun and how the Court should not
6 utilize that sort of interpretation. And I'd submit that to
7 the Court again.

8 More importantly, in Article -- in another article
9 of the treaty, the documents that the requesting
10 jurisdiction are required to submit to support an
11 extradition are listed out. There is a requirement that a
12 valid warrant be submitted, but there's absolutely no
13 requirement that there -- that any formal charges be filed.

14 Both the *Emami* opinion and the *Assarsson* opinion
15 make note of that and conclude that had the parties intended
16 that formal charges be filed as a condition precedent to
17 extradition, the requirement for formal charges would have
18 been contained in the list that's in Article III, I'm
19 reminded by Ms. Chang, detailing out documents that would
20 have to support an extradition request.

21 The fact that formal charges are absent from that
22 list leads inescapably to the conclusion that that wasn't
23 intended by the parties.

24 Counsel attempts to distinguish the *Emami* decision
25 on the basis that the -- there was a slight difference in

1 the German treaty in *Emami* and that it authorized
2 extradition on a judicially enforceable detention order.
3 While there is a passing reference to that language in the
4 *Emami* opinion, nowhere in the underlying rationale is that
5 mentioned. It's completely and totally absent.

6 Rather, the Court points to the transmutation of
7 the word "charged" from a verb into a noun from the
8 *Assarsson* case, and it particularly notes the absence of any
9 requirement that formal charges be filed in Article III of
10 the treaty.

11 I particularly commend to the Court the quotation
12 from the *Kaiser versus Rutherford* case, which is from
13 another circuit, admittedly, indicating that at the time
14 that it was decided, in the early '90s, as I recall, every
15 court to have considered the issue had found that formal
16 charges are not required in order to predicate an
17 extradition.

18 We have found no authority since the *Kaiser*
19 decision to the contrary and Counsel has cited that.

20 I think the Court can rely upon that citation or
21 that quotation still being valid and applicable law.

22 Counsel invites the Court to delve into the
23 slippery slope of interpreting Bosnian law. In her final
24 reply, she points to a distinction under Bosnian law between
25 suspect and an accused. That is precisely the analysis that

1 the *Emami* court cautions us not to engage in.

2 To do that would fly in the face of binding
3 circuit precedent, I would submit, and I ask the Court not
4 to do that.

5 But this main point that I want to make is that
6 every court gets -- that's considered this issue has -- has
7 found that formal charges aren't required.

8 THE COURT: There is some reference to some
9 procedures to Bosnia charging defendants in absentia before
10 extradition, citing something from *Veletic*. I couldn't find
11 the *Veletic* decision anywhere.

12 Do you know anything further about that?

13 MR. ATKINSON: No, Your Honor. My understanding
14 of the law in Bosnia is just to the contrary that an
15 individual can't be charged in Bosnia until they're
16 questioned. And that's why -- if you read the declaration
17 of Ms. Budimir, the Bosnian prosecutor -- that's behind Tab
18 5 -- if I'm not mistaken, she makes reference to the fact
19 that under Bosnian law they're unable to seek an indictment
20 until the defendant's there. That's one additional reason,
21 very logical reason, why the Court should interpret this
22 part of the treaty in the way that they're -- the United
23 States suggests.

24 If you were to -- to require formal charges, it
25 would essentially set up the United States to be a haven for

1 Bosnian fugitives who manage to slip out of the country
2 before they could be indicted, and they could never be
3 returned to Bosnia absent their being questioned.

4 So, you know, it'd be -- it would create,
5 essentially, an absurd result.

6 Indeed, our memoranda contains a case from a
7 sister circuit where in interpreting the Swiss treaty, which
8 had identical provisions about forbidding indictments while
9 a defendant is outside of the country, it characterizes it
10 as absurd an argument made by a fugitive that there should
11 be a requirement of formal charges.

12 I'm ready to move to the next issue unless the
13 Court has additional questions on this one.

14 THE COURT: No. That's fine.

15 MR. ATKINSON: The next issue I would like to
16 address is Ms. Handanovic's contention that because War
17 Crimes Against Civilians and War Crimes Against Prisoners of
18 War is not specifically listed in the treaty, that she
19 cannot be a -- she can't be extradited in connection with
20 those offenses.

21 The first point that I would like to make is that
22 Supreme Court precedent has long held from the time that the
23 *Factor* case was cited, which is cited extensively in the
24 memoranda, that the analysis of whether a foreign crime is
25 listed in a treaty such as this -- parties agree that this

1 is a list treaty -- is not to be controlled by the name of
2 the crime. It's not to be controlled by a rigorous, rigid
3 element-by-element comparison between the definition of the
4 crime in the requesting state and the definition of the
5 crime here in the United States.

6 Rather, the Court should look at the proscribed
7 conduct and -- and make the determination. And that's what
8 I'd ask the Court to do here.

9 The crime of War Crimes Against Prisoners of War,
10 specifically includes, in its definition, a parenthetical --
11 parenthetical reference to murder. It goes on to include
12 offenses broader than murder. It includes a parenthetical
13 reference to murder. And it is clear, from the documents
14 that Bosnia submitted in its witness statements, that Bosnia
15 wants her for the homicidal crimes that she committed in
16 Trusina and Gaj in April of 1993.

17 They don't want her for arson or some other
18 offense not listed in the treaty. They want her for murder
19 and for attempted murder.

20 This is a case where there were 22 deaths caused
21 by -- directly caused by the defendant and her unit mates
22 and four serious injuries.

23 So our point is that when one looks at the -- at
24 the elements of the two offenses for which it -- the
25 defendant is sought in the requesting state and compares

1 those with the elements of murder, either federally or under
2 state law, the Court will find substantial analogies that
3 pass muster under Supreme Court precedent.

4 I also would remind the Court that the affidavit
5 of Ms. Budimir, the Bosnian prosecutor, makes clear that
6 Bosnian law requires that both of these offenses be
7 committed intentionally. There's not some lesser culpable
8 mental state that would suffice to sustain a conviction
9 in -- in the demanding jurisdiction.

10 THE COURT: Which particular exhibit is that?

11 MR. ATKINSON: I believe that is Exhibit 5 and
12 tab -- or, I'm sorry, tab 5, and -- you know, I have it in
13 my memoranda.

14 THE COURT: Yes, I think you did.

15 MR. ATKINSON: I do. I can't put my finger on it
16 immediately.

17 THE COURT: All right.

18 MR. ATKINSON: I may be able to here if you just
19 give me a moment.

20 Do you know, Frances? I'd be happy to find that
21 and present them to the Court rather than --

22 THE COURT: That's fine. You can look for it, and
23 if you find it before the end of the hearing, let me know.

24 MR. ATKINSON: So the name of the offense isn't
25 dispositive. The cases, including Supreme Court precedent,

1 make it clear that the Court should look to the conduct
2 criminalized by the -- by the statute in the demanding state
3 or the requesting state and make a -- make a general
4 comparison.

5 THE COURT: Let me ask you for some clarification
6 on the relationship between listed offenses in the treaty
7 and extrinsical dual criminality. The cases seem to, as I
8 read them, sometimes place it to where both are required. I
9 know you make the argument that if the crime is listed or
10 the offense is listed in the treaty you don't need to also
11 comply with dual criminality. Are we in a situation here --
12 or actually the offense listed war crimes is not listed in
13 the treaty.

14 MR. ATKINSON: I struggle with that, as well,
15 Judge Stewart, and thankfully I have Ms. Chang to set me
16 straight.

17 And, indeed, my original draft she edited
18 substantially to correct me and to correct my
19 misimpressions, to be quite candid with you.

20 Let me answer that question in this way: The
21 answer depends upon the treaty. Some treaties are list
22 treaties and provide for dual criminality as well.

23 In other words, if a treaty were to say
24 extradition on the listed offense is authorized and
25 extradition on any offenses that are criminal in both

1 countries -- criminalized by statutes in both countries,
2 then that would be a -- both a list treaty and a dual
3 criminality treaty.

4 THE COURT: All right. Well, from that
5 perspective, if you look at Article II, it does list crimes.
6 At the end it has some language of extraditions also to take
7 place in anticipation of any of the offenses and crimes
8 mentioned, provided that such participation may be punished
9 in the United States as a felony and in Serbia as a crime.

10 So it appears that it does impose, perhaps, dual
11 criminality for participation in crimes, which I don't know
12 how to interpret that. Perhaps that means aider and abettor
13 liability or conspiracy liability. You look at dual
14 criminality. So I acknowledge your point that there are
15 different kind of treaties with different kinds of language.

16 What kind of treaty is this?

17 So that's -- that's the question.

18 If you would like Ms. Chang to make this argument
19 directly, that's fine with me, Mr. Atkinson.

20 MR. ATKINSON: Okay.

21 MS. CHANG: As Your Honor noted, the Supreme Court
22 has -- in some of the older precedents -- has seemed to
23 muddy the waters a little bit about dual criminality and
24 list treaty, and there are specific cases where the Court
25 seems to read into particular treaties that have no dual

1 criminality language, the dual criminality requirement, and
2 I think that point is made very clear by the Court in
3 *Factor*.

4 The Court in *Factor* points out that in previous
5 cases the Court seemed -- itself seemed to be a little bit
6 confused with what was going on there.

7 But, Your Honor, the Government's contention is
8 that in a list treaty the offenses that are listed were
9 listed because at that time they were already determined to
10 be dually criminal. They were denominated. They were
11 listed as extraditable crimes, because these were crimes
12 that both parties to the treaty believed were severe enough
13 to warrant extradition. And, thus, the dual criminality
14 analysis is basically collapsed in a list treaty because
15 those offenses list -- listed are there because they're
16 already dually criminal.

17 And so in a list treaty, such as the one we have
18 here, the 1901 treaty with Serbia, the Court's task is to
19 look at the conduct that is proscribed by the foreign
20 country statute and see whether that conduct constitutes one
21 of the listed offenses -- one or more of the listed offenses
22 in the treaty and if the conduct proscribed by the foreign
23 statute comprises or is analogous to one of the crimes that
24 are listed, then the -- the crime charged by the foreign
25 country is an extraditable offense.

1 THE COURT: And where can you actually find that
2 stated clearly in any case?

3 MS. CHANG: Your Honor, we believe that *Factor* is
4 the case that most supports this contention. And in reading
5 the previous -- the previous precedent from the Court, in
6 terms of *Collins* and *Benson*, those were a couple of cases
7 that seemed to muddy, sort of, the boundaries.

8 *Factor* is the one case that really sits back and
9 tries to delineate, again, the difference between a list
10 treaty and a dual criminality treaty.

11 As we stated in our briefing, Your Honor, we do
12 believe that it is our position that dual criminality is not
13 required in this treaty pursuant to Supreme Court precedent.

14 But even if this Court were to find that dual
15 criminality is required, we would propose that dual
16 criminality is, in fact, satisfied in this case.

17 The conduct charged against Ms. Handanovic could
18 be charged in the United States not only as murder,
19 attempted murder, various theories of liability for murder,
20 aiding and abetting and conspiracy, but also as war crimes
21 under the U.S. War Crimes statute.

22 So --

23 THE COURT: That is one thing that was not clear
24 to me from your briefing. You are also relying on a U.S.
25 statute for war crimes to show that they are substantially

1 analogous?

2 MS. CHANG: Your Honor, we are relying on the
3 murder statutes.

4 THE COURT: That's what I thought.

5 MS. CHANG: Right. But if the -- if it's believed
6 that dual criminality as a separate -- is a separate
7 requirement outside of just being the -- an offense on the
8 list of offenses, Your Honor, the Government would contend
9 that her conduct would be dually criminal under U.S. War
10 Crimes statute.

11 THE COURT: All right. So could you answer my
12 question as to how to interpret that last paragraph of
13 Article II regarding participation? That sounds like
14 perhaps the dual criminality requirement, at least, for some
15 category called participation.

16 MS. CHANG: Your Honor, I believe that that is my
17 understanding of that provision as well. Although, I am not
18 aware of any -- any case that has construed that particular
19 provision, I would think that that provision does apply to
20 what Your Honor was saying in terms of perhaps aiding and
21 abetting.

22 In that case, the -- it would require that it be
23 punished as a felony, as opposed to, presumably, a
24 misdemeanor in the United States, and then punishable in
25 Serbia as a war crime offense.

1 THE COURT: If you're taking the position that
2 this is a list treaty and you're relying on the listed crime
3 of murder and possibly also attempt to commit murder in that
4 Paragraph 1, Article II, what does that mean -- or what --
5 what does -- what do we do about the fact that the offenses
6 charged in the request for extradition under war crimes
7 against civilians or war crimes against prisoners of war,
8 even if you look at the subparagraphs (a) and (b), include
9 broader offenses than just murder and attempted murder?

10 MS. CHANG: Your Honor, the -- the facts submitted
11 by the requesting government here in Bosnia make clear that
12 the conduct they seek to charge Ms. Handanovic with
13 constitutes those lists offenses.

14 And the fact that their statute may be broader and
15 cover a broader array of conduct should not leave the Court
16 to automatically assume or be -- or be concerned that the
17 foreign country will, in fact, charge her with conduct that
18 is not presented by the Court -- to the Court here.

19 There are numerous offenses under U.S. law, for
20 example, that do cover various permutations. For example,
21 drug trafficking. A particular type of drug trafficking may
22 or may not be criminalized overseas. And, yet, there's
23 no -- there is no -- little concern from -- from us, when we
24 make our extradition request, that we need to make clear
25 that we will not be presenting evidence of conduct that is

1 not presented to the foreign country.

2 THE COURT: Well, here Ms. Handanovic seems
3 particularly concerned about the fact that there are some
4 victims named in the request documents but she is also being
5 charged with war crimes for killings of persons or victims
6 who are not specifically named and that that would go beyond
7 murder or attempted murder; that that's -- you know, that's
8 something different.

9 Now, this may overlap into the rule of speciality.
10 I'm not sure. But what is your response to that; that here,
11 if we're relying simply on murder and attempted murder, does
12 that limit the victims for which extradition is appropriate?

13 MS. CHANG: Well, first of all, Your Honor, the --
14 Ms. Handanovic has pointed to the names listed on the arrest
15 warrant as being incomplete in terms of listing the names of
16 the victims.

17 However, Your Honor, if you -- if -- in
18 Ms. Budimir's affidavit, she lists the names of every single
19 individual who had died from the attack on Trusina as well
20 as from the firing squad in Gaj.

21 THE COURT: The affidavit's name again?
22 Prosecutor's affidavit?

23 MS. CHANG: Yes. Ms. Budimir's affidavit, which
24 is in your binder.

25 MS. HAY: At page 7.

1 MS. CHANG: Thank you.

2 Your Honor, I believe, as well, the Court in
3 Bosnia, in some of their -- in some of the Court's orders,
4 has also listed the names of those particular victims.

5 So if the names of the victims is the particular
6 issue of concern, the Government contends that that concern
7 is not present.

8 However, the Government would argue that the names
9 of the victims is not -- the lack of the names of the
10 victims, if you will, Your Honor, is not a reason to -- to
11 deny a certificate of extradition.

12 Your Honor, the Government points to the case of
13 *Artukovic*, which is cited by Counsel, where the Court
14 certified, in its amended certificate, the extradition of
15 Andrija Artukovic for numerous murders.

16 And that's in the opinion *In Re: Extradition of*
17 *Artukovic* 628 F. Supp 1370 at 1379.

18 And in that amended certificate the Court, among
19 other things, certified him for extradition for the murders
20 of between 4- and 500 persons. Again, also the entire
21 civilian population of several villages. Another event,
22 approximately 5,000 persons murdered by rifle fire in
23 another area and also several hundred persons captured in
24 Zumberg region.

25 That court -- I -- I don't have the actual request

1 from the foreign country, and I have not seen it, but the
2 Government contends that in this case, because of the way
3 that the certificate was -- was worded, is that the Court
4 did not require, in fact, the names of every single one of
5 the victims that Mr. Artukovic was supposed to have murdered
6 in that case.

7 So based on this -- on this case, on this example,
8 the Government contends that even the lack of names of
9 specific individuals is not a reason to deny a certificate
10 of extradition.

11 MS. HAY: Your Honor, I realize the Government
12 probably has a lot of different arguments, but maybe it
13 would be helpful to just engage on this. This is obviously
14 one of the key issues in the case. And maybe if I responded
15 to some of those, we can try to clarify this some more.

16 Unless you want to hear the rest of the
17 Government's presentation. I -- I can go either way. I
18 thought in the moment when they were talking about these
19 cases, I thought there might be things we could clarify,
20 but --

21 THE COURT: Let me get through the Government's
22 argument, and then I'll get to you on this.

23 MS. HAY: Okay.

24 MR. ATKINSON: Judge, we commend to you the
25 *Arambasic* case that was amended to our initial responses in

1 exhibit at -- and we commit it to you for these reasons: It
2 involves the same treaty, and it involves virtually
3 identical statutes involving war crimes.

4 And there the -- the fact that the war crime
5 statutes charged were not on the list did not deter the
6 Court from issuing its extradition certificate.

7 In that decision, there's an extensive analysis of
8 the similarity or the analogy between the Bosnian war crimes
9 statute and murder.

10 THE COURT: I could go on dual criminality
11 analysis, which obviously you're disagreeing with. You're
12 saying it wasn't really necessary.

13 MR. ATKINSON: Well, the -- the *Arambasic* case
14 essentially looks at this rather broad war crimes statute
15 and compares it to the murder statute and essentially
16 concludes that there's sufficient analogies to warrant
17 extradition. And there's not a requirement that the
18 offenses in the requesting state and the generic offense
19 compare element for element or that they even go by the same
20 name.

21 The fact that the offense in the demanding state
22 is broader than the listed offense is at no moment when it's
23 clear that the facts predicate the demand for the fugitive
24 based upon a homicidal offense or an attempted homicide.

25 Ms. Handanovic attempts to distinguish the

1 *Arambasic* case on the basis that in *Arambasic* the defendant
2 had already been convicted in absentia in -- I believe it
3 was Croatia, if I'm not mistaken -- and that that somehow
4 changes the analysis.

5 That's a distinction without a difference,
6 Judge Stewart.

7 The same analysis must be -- must be made in
8 either instance. And that is whether the war crimes offense
9 is sufficiently analogous to murder or other listed offenses
10 even though it's admittedly broader to warrant extradition.

11 So we commend the Court to *Arambasic*. That is the
12 most analogous case we were able to find.

13 Again, Ms. Handanovic is asking the Court to
14 conduct individual probable cause analysis for each of the
15 22 homicide victims and each of the four victims who were
16 seriously injured and whom the Government contends were
17 victims of attempted murder essentially. She would ask the
18 Court to produce 26 separate certifications.

19 Our position is that the -- these two offenses are
20 unitary crimes that -- they're unitary crimes with multiple
21 victims. They're a single offense that involves, you know,
22 any number of different victims. All of whom are named in
23 the Bosnian extradition request if you drill down into --
24 into the niceties of the request.

25 Probable cause has been established that the

1 defendant committed this offense. And there's really no
2 serious argument to the contrary. I just remind the Court
3 that on pages 28 and 29 of Bosnian's extradition request --
4 actually pages 28 and 29 of your notebook, you'll see a
5 description of what the pseudonymous witnesses talk about
6 with respect to -- to the execution firing squad style in
7 Gaj.

8 Pages 29 to 32 provide corroborative evidence
9 consisting of military reports, death certificates,
10 autopsies, things of that nature. They're building blocks
11 of a homicide case.

12 Pages 92 and 94 set out the war crime statutes at
13 issue here, and I'd specifically commend to you the fact
14 that war crimes against prisoners of war mentions murder.

15 So the fact that it's analogous to generic murder
16 offenses is undeniable.

17 I commend the Court to pages 140 -- excuse me,
18 136, where, while the fugitive was present, her squad-mates
19 talked about their raid -- upcoming raid on Trusina and
20 talked about their intent to kill all of the Croatians who
21 were present in that village. And she was present during
22 that conversation.

23 I commend the Court to pages 140 to 142, where
24 pseudonymous witness A describes, in detail, the firing
25 squad and execution of the victims in Gaj. He establishes

1 that the motive for this, among others, was in revenge for
2 the death of one of their members, Samko, during the course
3 of these events.

4 So there can be little doubt but that this was
5 premeditated.

6 This witness describes, in detail,
7 Ms. Handanovic's participation in the initial execution of
8 the -- of the civilians and prisoners of war who were
9 present in Gaj and recounts how she stood over any surviving
10 victims who showed signs of life and put bullets in their
11 head, essentially.

12 This witness describes how Ms. Handanovic and
13 her -- and her unit-mates used women who weren't executed as
14 human shields. This witness identifies her from a photo
15 lineup at pages 122, 128, and 143.

16 That, in itself, constitutes probable cause, I'd
17 submit.

18 It goes on. Pseudonymous witness B, at page 177
19 and 178, describes the firing squad at Gaj similarly to
20 pseudonymous witness A. She talks about the fugitive's
21 participation, about her shooting those on the ground who
22 showed signs of life. And this witness makes it clear that
23 the motive for the firing squad at Gaj was in revenge for
24 one of their members having been killed.

25 Witness B, at page 360, Judge Stewart, talks about

1 having witnessed Ms. Handanovic execute two civilians in
2 Trusina before the massacre at Gaj occurred and described
3 them as being somewhere between 65 and 70 years of age.

4 At pages 344, 346, and 361 she identifies
5 Ms. Handanovic from a photo lineup.

6 Witness D describes Ms. Handanovic urging her
7 unit-mates to kill the prisoners who had been taken at Gaj.
8 Pages 206 to 208, Judge Stewart.

9 She describes her participation in the firing
10 squad as witnesses A and B did.

11 Witness D indicated that he or she knew
12 Ms. Handanovic very well and was able to identify her in a
13 photo lineup at page 210.

14 Witness E describes Ms. Handanovic's participation
15 back in Trusina before the events later that day in Gaj and
16 the killing of a civilian woman and having -- Ms. Handanovic
17 having put two or three bullets into the chest of that
18 woman.

19 Witness E hadn't seen Ms. Handanovic in some
20 period of time. As I recall, she wasn't asked to see a
21 photo lineup, but she remembered her and her participation
22 in great detail.

23 Witness O identifies Ms. Handanovic at page 273
24 from the photo lineup and at pages 270 and 271 also
25 describes, consistently with the other witnesses,

1 Ms. Handanovic having participated in the firing squad and
2 having stood over the survivors, or at least those still
3 showing signs of life after the firing squad, and pumping
4 additional bullets into them to ensure that they were
5 deceased.

6 So our suggestion is that there's just no question
7 about probable cause and that these crimes are analogous to
8 murder.

9 We're -- we ask that the certification should be
10 for these unitary crimes with multiple victims.

11 And if the Court is concerned about the breadth of
12 the Bosnian war crimes statute, the Court could qualify the
13 certification to include homicidal -- cases in which persons
14 were -- were killed, but that's certainly not required and
15 the cases are replete with examples of certifications being
16 made and being affirmed on appeal and on habeas where the
17 Court simply said that it's not going to presume that a
18 requesting state will, as Ms. Chang just mentioned, include
19 offenses that are broader than those that are included in
20 the request. And principles of comity require that.

21 I had in my notes to point out to you the very
22 broad certification involving the 4- to 500 murders in
23 *Artukovic*; the entire civilian population of villages. In
24 other words, what you just heard from the *Artukovic* case and
25 the certification there where there was not an

1 individualized analysis of probable cause and the way that
2 Ms. Handanovic contends that the Court has to approach this
3 case.

4 Rather, this makes clear -- these are my words, my
5 analysis, I suppose -- that these offenses are -- are
6 unitary offenses involving multiple victims, and the Court
7 need not concern itself with conducting 26 individualized
8 probable cause analysis.

9 Again, with respect to the dual criminality
10 analysis, you've heard Ms. Chang on that. I'm not going to
11 repeat the points she made other than to indicate that even
12 if a dual criminality analysis were required, it's clear
13 that Ms. Handanovic's acts would be criminal both here in
14 the United States and in Bosnia.

15 I want to move to the statute of limitations
16 argument. And that's probably the most intensive --
17 factually intensive argument with respect to the offenses of
18 attempted murder.

19 But let me begin by making this point: In her
20 original opposition to extradition, Ms. Handanovic made the
21 argument that the Court should be confined to what appeared
22 in the warrant and its understanding of the facts and that
23 those facts were more analogous to conspiracy to commit
24 murder, an inchoate offense, than to the completed crime of
25 murder or attempted murder. And she pointed out that the

1 statute of limitations for conspiracy to commit murder is
2 only five years and that that statute has long run.

3 Ms. Handanovic would have the Court ignore all of
4 the facts that I've just gone through from all of the
5 witnesses of the -- she would have the Court ignore the
6 prosecutor's affidavit summarizing those facts and including
7 the corroborative evidence from the military records and the
8 autopsies, and the like, in conducting its analysis of which
9 U.S. offense is -- dictates the applicable statute of
10 limitations.

11 The parties agree, I might add, that the unit of
12 analysis here for your statute of limitations concerns is
13 U.S. law; what the statute of limitations under U.S. law is.

14 Arguing that all Ms. Handanovic is guilty of is
15 conspiracy to commit murder is analogous to arguing that
16 Bonnie and Clyde were only guilty of committing conspiracy
17 to commit robbery.

18 Of course Ms. Handanovic is guilty of conspiracy
19 to commit murder, but her criminal liability goes much
20 greater -- is much broader than that, as evidenced by the
21 facts that I've just recounted and briefed to the Court.
22 And those facts are replete in the Bosnian extradition
23 request, as we pointed out in our first responsive
24 memorandum, even if one were to approach this case in the
25 way that Ms. Handanovic asks and look at it as a conspiracy

1 to commit murder for an aiding and abetting case, because
2 there is a conspiracy, coconspirators are liable under the
3 Pinkerton rule and under principles of vicarious liability
4 for the acts of their coconspirators or acts of their aiders
5 and abettors as substantive crimes.

6 So what she asks you to do, which I'd ask the
7 Court not to take seriously, in the first instance, but even
8 if the Court were to take it seriously, doesn't offer her
9 any help whatsoever, because, under a conspiracy analysis,
10 she's liable for the acts of her coconspirators as a
11 substantive crime, which gets us to the same place; that is,
12 she's chargeable for the completed crimes of murder and for
13 attempted murder.

14 The parties agree that there's no statute of
15 limitations under U.S. law for -- for murder. The parties
16 agree, at least under federal law, that the statute of
17 limitations for attempted murder is five years. The
18 question, given the fact that admittedly more than five
19 years has expired since these crimes were committed in April
20 of 1993, is whether the statute's tolled and what the legal
21 principles and factual matters the Court ought to take into
22 consideration are that would guide the Court's analysis in
23 that regard.

24 We contend that the statute was tolled when
25 Ms. Handanovic fled or moved from Bosnia to Austria in

1 August of 1995; three months after she had been discharged
2 from the Army.

3 We submit that the inferences that one can draw
4 from the facts on the ground in Bosnia and her actions
5 support your finding that she was -- that her movements were
6 done in anticipation of a possibility that she might be
7 charged ultimately.

8 Though the case law is clear that the Government
9 need not show an existing warrant or an existing
10 investigative process in which the fugitive is actively
11 sought; but, rather, an anticipatory fleeing is sufficient.
12 That is, fleeing in hopes that by doing so the fugitive will
13 avoid apprehension if and when a warrant is obtained.

14 Just to go through the facts once again,
15 admittedly, there was undoubtedly substantial chaos in
16 Bosnia following the Bosnian war. There were scores --
17 hundreds of thousands -- of refugees who were displaced due
18 to the ethnic cleansing and ethnic strike that occurred as a
19 result of that war, but I'd like to point out that
20 Ms. Handanovic was discharged from the Army in May of 1995.
21 She moved to Austria in August of '95 and sought refugee
22 status in the United States in October of '95 and actually
23 immigrated to the United States in May of '96. She's
24 changed her name twice, as I've indicated; once by marriage
25 and once by an actual name change. The facts on the ground

1 help us interpret what the motivation behind those moves
2 might have been.

3 The International Criminal Tribunal for the former
4 Yugoslavia commenced in 1993, a couple of years before. One
5 has to take in mind that the acts that Ms. Handanovic
6 committed in April of 1993. She knew that she had committed
7 those acts. It had to have affected her. She had to have
8 been worried about whether war crimes investigators and
9 prosecutors would ultimately get around to her.

10 And what happened in Trusina and Gaj, to deny that
11 is to close one's eyes to basic human nature. Those crimes
12 are to abhorrent and so egregious that any human being that
13 had committed them must have been worried about having been
14 ultimately held to answer to those crimes, Judge Stewart.

15 That's our point. When one looks at what happens
16 following the convocation of what I call the ICTY -- the
17 International Criminal Tribunal for the former Yugoslavia --
18 in The Hague, in Holland, one can see that in -- by July of
19 1995, a month before Ms. Handanovic fled -- I will say
20 "fled" -- Bosnia to Austria, there had been wide public
21 announcement. I'd ask the Court to note a wide public
22 announcement of, by that time, 46 indictments for war
23 crimes.

24 THE COURT: Were any of these indictments against
25 lower-level Army members?

1 MR. ATKINSON: Yes. Yes, they were.

2 Two of them were against high-level personnel and
3 there were lower-level individuals who were indicted as
4 well.

5 Judge Stewart, that's a very good question, and
6 our memorandum makes reference to the precise rank or
7 position of some of those individuals.

8 MS. HAY: Could you just tell us what page you're
9 looking at?

10 MR. ATKINSON: Page 30 in our -- in our initial
11 response.

12 Some of the individuals had engaged in conduct
13 very similar to Ms. Handanovic's. Some were guards and
14 interrogators at prison camps. And also in our surrebuttal
15 memorandum there's mention of that as well. And if you'd
16 like me to find that after the hearing and provide you with
17 the precise information, I'd be happy to do that.

18 MS. HAY: Can I clarify? The Government is saying
19 that the guards and interrogators are the equivalent of
20 Ms. Handanovic? Is that the argument?

21 MR. ATKINSON: No. That there are -- in our
22 surrebuttal argument there's additional examples of
23 individuals who are the equivalent of Ms. Handanovic that
24 I'll supply to the Court.

25 Some of the individuals had engaged in conduct

1 quite similar to Ms. Handanovic's. And the supporting
2 citations to authoritative material and websites run by the
3 ICTY are all contained in the memorandum.

4 THE COURT: Are you primarily relying on that
5 website for your information?

6 MR. ATKINSON: I'm sorry, Judge Stewart?

7 THE COURT: Are you primarily relying on that
8 website for your information?

9 MR. ATKINSON: Yes.

10 THE COURT: Okay.

11 MR. ATKINSON: I point out that Bosnia entered
12 into a memorandum of understanding with the ICTY in 1994,
13 not long before Ms. Handanovic fled, but after she committed
14 the war crimes that are at issue in this case. And the MOU
15 essentially provided that the Bosnian authorities would
16 assist in the -- with the investigators from the ICTY.
17 That's on page 21 of our surrebuttal -- surreply argument.

18 I'd point out that in February of 1995 -- that's
19 noted on the next page, page 22, of our memorandum -- there
20 was a -- an indictment was issued relating to a death camp
21 run by Serbs, Bosnian Serbs. Not the same ethnicity as the
22 defendant; but, nevertheless, an indictment in which 21
23 separate people were charged. And the locus, the activity
24 of this indictment, was about 10 miles from Sanski Most,
25 Ms. Handanovic's home.

1 It was a lengthy investigation involving a number
2 of personnel. I think that the website indicates 20
3 separate investigators were out interviewing witnesses in
4 that area. I'd submit to you that word of the investigators
5 interviewing witnesses at a site 10 miles from
6 Ms. Handanovic's home in Sanski Most had to have been
7 conveyed to her and had to have had some effect on her,
8 given the acts she committed here.

9 I'd submit that that inference we're asking the
10 Court to draw is not a difficult one to make at all. I'd
11 submit that it's -- that the most likely explanation for
12 Ms. Handanovic leaving was her anticipation and fear that
13 she might ultimately be called to account for her conduct in
14 April of 1993.

15 There may have been other factors at play. She
16 may have sought a better economic life, she may have wanted
17 to avoid persecution or being victimized herself. The
18 Government can readily acknowledge those additional motives.
19 But if a motive was to get out of Bosnia, that area, in
20 order to reduce the chances that she'd ultimately be called
21 to account for -- for her actions, the Government suggests
22 that's sufficient for the Court to find that the statutes
23 should be tolled.

24 THE COURT: Well, you can see you don't have any
25 case to rely on that's quite like this. In the other cases,

1 you have someone aware of a warrant being issued or imminent
2 or you have attempts to conceal the name. You don't have
3 any of that here in this case.

4 MR. ATKINSON: Well, there are cases where
5 warrants hadn't existed; where there weren't active
6 investigations going on. But I will concede, Judge Stewart,
7 that I know of no case where the constellation of all of
8 these circumstances exist in a single case; but, then again,
9 there's very few cases where a fugitive's conduct is as
10 egregious as one has here, where it strikes one so clearly
11 that the fugitive must have been fearful of being held to
12 account for the conduct. Because most of the other cases
13 involve frauds or economic crimes and not multi-victim
14 homicide, such as we have here.

15 Even if you were uncomfortable in drawing that
16 inference, even if you find that the statute of limitations
17 hadn't tolled as to the attempted murder offenses, you
18 should still certify the two unitary offenses that -- for
19 which Bosnia seeks Ms. Handanovic's return.

20 These are single crimes with multiple victims, as
21 I indicated. And if you find that the statute hasn't tolled
22 as to the four individuals listed in the request as having
23 survived and having been the victims of attempted murder,
24 rather than murder, then your certification should require
25 that a conviction may not be had solely on the basis of

1 victims who were injured but survived.

2 In other words, this is a single crime, and your
3 certification should specify that a conviction must include
4 a homicide victim, and it cannot rest exclusively on victims
5 of attempted murder or victims who survived, because their
6 prosecution would be barred by her -- or her extradition and
7 ultimate prosecution would be barred by U.S. statute of
8 limitations.

9 Stated differently -- and we'd be happy to draft a
10 certification that would accomplish this -- the
11 certification should require -- I'm just going to turn it
12 upside down -- should require at least one homicide victim
13 be the basis for any conviction in Bosnia.

14 That's my presentation. I would be happy to
15 answer any more questions the Court has.

16 THE COURT: No. That -- just one other question.
17 On the rule of speciality, I gather your main argument there
18 is it's just not applicable here because there's been no
19 extradition yet, and that's only properly raised after
20 there's been an extradition?

21 MR. ATKINSON: Yes, Your Honor. We can find
22 absolutely no cases where the rule of speciality affects a
23 proceeding at this stage. Simply -- simply said.

24 If Bosnia were to somehow breach the rule of
25 specialty, then the Secretary of State could -- could

1 enforce it.

2 THE COURT: Okay. All right. Anyone need to take
3 a quick break?

4 Court reporter okay? Okay. Very good.

5 All right. Ms. Hay.

6 MS. HAY: Thank you, Your Honor.

7 Your Honor, obviously, this is a difficult case,
8 because these are serious allegations, and I want to make
9 clear that no one is in favor of war crimes or torture or
10 crimes against civilians; but Ms. Handanovic is entitled to
11 be treated fairly here. She's a U.S. citizen. She's a
12 mother. She's a human being. No matter what the
13 allegations, she should get a fair hearing in this Court
14 based on the law. And that's really not what's happening.

15 The Government seeks to extradite her, force her
16 to leave this country, but they're not willing to follow the
17 law, as I see it, to do that. And I don't think the Court
18 should allow that.

19 The Government asserts that they can rely on this
20 1902 treaty to extradite her. I've written extensively on
21 that -- why the treaty should not be followed -- and we can
22 review that for a moment. But even if that treaty were
23 followed, Your Honor, then if the Court were to allow that
24 treaty to be used, then they should follow the terms of that
25 treaty. And I think that's where we're having a -- kind of

1 a shell game here. They want you to use a treaty which is
2 obviously an antiquated, centuries-old treaty at this point
3 and they want to use that old treaty and say, well, let's
4 use modern cases and modern ways of understanding it in
5 other to extradite her on this modern crime.

6 War crimes were not in existence. They were not a
7 crime when this treaty was created. So they want to use an
8 old treaty and change it for their purposes now. That's
9 just not allowed.

10 And so, first, I don't think they should be able
11 to use the treaty at all. I'll just briefly -- Your Honor,
12 we briefed this, of course, but there are cases that allow
13 this Court to apply the rule of successor state doctrine
14 when -- where it's twice removed from the country that
15 actually signed the treaty.

16 Clearly, there's a Successor State Doctrine that's
17 been acknowledged in the courts where if one country
18 dissolves or expands or something changes, the countries
19 that emerge from it can succeed to the same treaties.

20 But we're now beyond that. We're now trying to
21 take a treaty that was written in 1902, or signed --
22 ratified with the Senate in 1902, with a different country.
23 Bosnia was not a part of that country at that time. It
24 became part of what was the confederation of different
25 countries that became Yugoslavia. That -- Yugoslavia

1 succeeded to the treaty, but now we're trying to go one step
2 further.

3 None of the cases that the Government cites allow
4 the Court to do that. There are -- of course there are
5 cases that have been cited where no one has raised this
6 argument exactly about Senate ratification. So this Court,
7 though, has an obligation to look at that.

8 And I guess the question is if -- if not now,
9 when?

10 Does the Government continue this treaty as long
11 as they want? Another century goes by? What is the limit
12 for the Executive Branch to decide that a treaty is going to
13 just continue on and on?

14 At some point -- we have a Constitution that
15 requires that the Senate ratify treaties, and this Court is
16 given the explicit role under the statute to say whether
17 there's a treaty in force and effect.

18 Your Honor, I don't see any basis in the law to
19 say that this treaty should be in force and in effect with
20 the country of Bosnia when the Senate has not ratified it.

21 I'll tell you two points. One is in the statute.
22 I -- I ripped my pages out of the statute book. But if you
23 look at the statute, Extradition Statute 3181, they list the
24 treaties in which we have extradition treaties. Bosnia is
25 not listed in the very statute that we're using.

1 In addition, in the authoritative treaties in
2 force, the document created by the State Department, where
3 they list treaties that are in effect, Bosnia is not listed
4 as having an extradition treaty with the United States.

5 Now, if it were true that the Government has
6 decided definitively that Bosnia has a treaty with the
7 United States, why haven't we updated this document? Since
8 1992 we have recognized Bosnia as a country.

9 There's obviously a -- I think a decision to just
10 push it off, to not address it; just let the courts continue
11 to follow this. Somebody should decide what the
12 Constitution means and apply the law.

13 So, Your Honor, there's plenty of argument about
14 that. And, in the end, I think the Court should just rule
15 that the 1902 treaty can't be used. The result would be, of
16 course, an appeal by the Government. Maybe the Senate would
17 take an action. Maybe somebody would step up and say "Well,
18 this should happen." But if the courts don't do anything,
19 when does the Senate get to have its say? When does
20 somebody get to say this is going too far?

21 Your Honor, if you were to apply this 1902 treaty,
22 then the fair thing to do is to actually apply the treaty;
23 to not apply something new, not apply something modern. And
24 this 1902 treaty does not allow extradition for war crimes.
25 And the government has acknowledged it's a list treaty. It

1 doesn't have in it a dual criminality provision that says,
2 "You can extradite somebody for an offense that's a felony
3 in both countries."

4 So many of the cases that have been cited,
5 especially in their initial briefs, are cases where the
6 treaty allows for extradition based on a felony in both
7 countries. This treaty doesn't allow that, so we shouldn't
8 use those cases.

9 The Ninth Circuit and the Supreme Court cases that
10 talk about extradition from the 1920s and 1906 I discuss in
11 my reply to their extradition memo. And that would be
12 *Collins, Factor, Benson* -- there's a number of them -- that
13 look at whether you have to actually have the listed crime
14 or whether it could be something close.

15 And I guess the Government was making the point
16 that if the conduct is there, then it doesn't matter if the
17 name is different. And I would say that the Supreme Court
18 cases that make that point are in a different context.

19 Those were fraud cases. And if you look at the
20 treaties, a lot of those treaties say that if it's -- it's a
21 fraud if it's a crime in both countries.

22 So, although there's a list of offenses, the
23 actual definition of fraud refers to fraud in both
24 countries.

25 So the Supreme Court is not saying that for any of

1 the offenses that are listed you can compare the crime in
2 both countries. They're looking at the specifics and
3 especially fraud cases. I think the definitions of fraud
4 vary a little bit, but it's more evident what the crime is.

5 In this case, the treaty allows extradition for
6 murder and attempted murder, for arson, for a number of
7 other crimes, but it doesn't -- it doesn't allow extradition
8 for just war crimes.

9 And, Your Honor, it's an important point, because
10 there's a statute of limitations in the treaty. And the
11 treaty says you can't extradite somebody for an offense if
12 the time for punishing that offense in this country has
13 passed.

14 So we -- we need to have the offense. We need to
15 define the offense so that we can know whether the statute
16 of limitations has passed, so we can know what she's being
17 allowed to be sent out of this country for.

18 I guess the Government's point is just extradite
19 her for war crimes generally and let them figure it out in
20 Bosnia, and that's really not fair. The treaty doesn't
21 allow that.

22 I think what should be required here is the
23 Government should try to identify what murders or conspiracy
24 to murder, if that's what they're arguing, or attempt to
25 murder, she should being extradited for, and they should

1 prove probable cause for those.

2 THE COURT: Well, doesn't the request, though,
3 have quite a bit of factual supporting information as to
4 what murders or attempted murders are at issue here? I
5 mean, this isn't a case where we're saying, you know, war
6 crimes for killing everyone in several villages during a
7 time period over several years. That's not what is being
8 described in the extradition papers.

9 MS. HAY: Well, Your Honor, I think what they've
10 done is combined a number of different events that all
11 happen in this one town, in Trusina and Gaj, and essentially
12 they're charging Ms. Handanovic as if she did all of that.

13 What I believe the Government has the burden of
14 doing is to sit down and say, "Now here's what she did.
15 Here's the people that she did this to," or "Here's who she
16 conspired with and here's who was killed."

17 They've given you pages and pages and pages of
18 names, dates, et cetera. But, in fact, most of that does
19 not -- I mean, they don't add up to 22 people. For example,
20 we can -- I can tell you that the arrest warrant says three
21 HVO, or Croat defense counsel, individuals were executed and
22 five civilians were executed. And then 19 Croat civilians
23 were killed and four injured. Okay. So that's 27 killed.

24 The prosecutor says 16 civilians killed, and she
25 lists them. Four civilians injured. And then three HVO

1 executed and three civilians executed.

2 First, the numbers don't match together. The
3 investigator, who's report was submitted at page 277, she
4 lists -- or he lists -- 17 civilians, five HVO members, and
5 two persons wounded.

6 So there's a lot of facts here, but when I went
7 through this -- and I believe this was the Government's
8 burden, and they just have not done this, so I went through
9 to figure out, well, what are witnesses saying that
10 Ms. Handanovic actually did?

11 And I think from all these witnesses is what you
12 can conclude is there are witnesses who say she was part of
13 a firing squad who, upon the order of a commander, fired her
14 rifle.

15 There are few witnesses who say that she, after
16 that firing squad, walked up to people on the ground and
17 fired additional shots.

18 So if we take those allegations, which I can -- I
19 can go through this and tell you which witnesses said that,
20 that's only five or six people, Your Honor.

21 There's one witness who claimed there might be 10
22 or 12 people who were in the firing squad. But then he said
23 he actually heard that number on TV, but he wasn't -- he
24 didn't remember how many.

25 Other witnesses said four or five people in this

1 execution-style firing squad. So that's four or five
2 people.

3 I went through to find where are the other
4 civilians that are listed. Where are these people? What
5 you have are a lot of different statements that civilians
6 were found in a house, guns were shot, but Ms. Handanovic
7 was not said to be near there.

8 There are a few other individual moments. There's
9 a woman with blond hair that one witness says was shot three
10 times in the chest. We don't know if that was the person
11 who was injured or the person who was killed. It doesn't
12 say. So I don't know if that's one of the civilians who was
13 harmed, which I contend is past the statute of limitations,
14 or if that was somebody who was killed.

15 There's another incident where somebody says she
16 shot an elderly couple. Another one of the Government's
17 witnesses says two different people shot the elderly couple.
18 So I think you have contradictory witnesses there. And
19 given that the Government has the burden of probable cause
20 when they have contradictory witnesses, I'd say they didn't
21 meet their probable cause burden.

22 In the end, the Government argues, "Well, we have
23 proof of motive, because Ms. Handanovic clearly wanted to do
24 all of this based on Samko being killed.

25 The witnesses were pretty consistent that nobody

1 actually knew he was dead. He had just been injured. And
2 that injury occurred right before the alleged firing squad.

3 So that would be a motive and some witnesses
4 attributed that motive to the firing squad, who were about
5 five people that were killed.

6 If he was killed or injured right about the firing
7 squad, then that motive has nothing to do with the civilians
8 who supposedly were injured or killed earlier.

9 So, Your Honor, what I see here is Ms. Handanovic
10 was part of an army, and the witnesses all consistently say
11 that this army unit was used in a number of places. This
12 was not a rogue army unit. Nobody was saying this was a
13 unit intending to go out and commit war crimes.

14 This is a unit that had a task of freeing an area
15 where the HVO were blocking their -- the Republic of BiH
16 Army from its role in a war. This is a war going on.

17 This unit was sent into a town. They were woken
18 up in the morning at a school and given their positions.
19 The unit was joined by two other units. And during the
20 course of that morning -- and some witnesses say this was
21 about an hour and a half, some witnesses made it a little
22 bit longer. But in the course of that short time, and one
23 day in a war, there's an allegation that there was a firing
24 squad and five or six people were shot that Ms. Handanovic
25 was allegedly part of.

1 This is not -- this is not, as the Government is
2 trying to say, an atrocity of unbelievable proportions.
3 This is not the most egregious crime you can find. The
4 crimes that they refer to that the War Crimes Council was
5 prosecuting were crimes at a death camp where people were
6 being tortured. So I think the point, Your Honor, is that
7 there are a lot of facts here, but it's not fair for the
8 Government to take a series of facts that involved a whole
9 lot of people and charge Ms. Handanovic as if she's involved
10 in all 22.

11 That's really not -- that's not fair, especially
12 when the treaty doesn't say "extradite on generalized war
13 crimes." The treaty says "extradite for murder."

14 So the fair thing to do, and what's required under
15 the law, is to see if there's probable cause to believe that
16 she committed first degree murder of any -- of any of the
17 people that they've listed here.

18 Now, I -- you know, I recognize that they have
19 witnesses who will say there was a firing squad. And a
20 firing squad, even based on an order, would be considered an
21 intentional event. But the rest of these, Your Honor, I
22 don't see that they've met probable cause at all.

23 So it wouldn't be fair just to extradite her and
24 say go ahead and extradite her for all of these names when
25 the Government hasn't tied the names to the actions.

1 That's their burden to do, and they haven't met
2 that burden. I can sit down and write out a certificate and
3 put in the names, but I don't think that should be my
4 burden. I think the Court should say the Government has not
5 met its burden. It can't simply take a document that's
6 several hundred pages long, filled with events that are not
7 related to Ms. Handanovic, from witnesses who are not
8 describing her, and -- and ask the Court to just certify a
9 full crime.

10 The case that the Government refers to, I think,
11 assists in that.

12 The cases under this -- this treaty, most of them
13 that I found were extraditions for murder, for robbery, for
14 specific crimes.

15 The *Artukovic* case that the Government refers to
16 and that I write about, the Court did not extradite for war
17 crimes. That was what probably the offense in Yugoslavia or
18 Bosnia, or wherever he was going, was going to be; but the
19 Court actually listed murder. They listed murder of 400
20 people, murder within a certain town, and we don't know what
21 evidence was submitted to the Court to help the Court to
22 write that kind of statement.

23 But it's clear that the Court listed murders and
24 identified, to the extent possible, the number and the place
25 of the murders.

1 That's what I believe the Government should do
2 here. And we have -- I could write it. I mean, we have the
3 list of the places where execution-style murders
4 apparently -- or supposedly took place. We have a few
5 witnesses who have alleged that Ms. Handanovic specifically
6 fired a gun. Some of those are not known to be murders,
7 from what I can tell here.

8 But the events that the Government is essentially
9 saying that because somebody in some of these units
10 somewhere killed people, Ms. Handanovic should be held
11 accountable. That's really not what the law requires.

12 Your Honor, the Government urged you to follow
13 that *Arambasic* case. That's from the Southern District of
14 South Dakota. And they provided a copy of that. I agree
15 the Court there went through a very detailed analysis. They
16 did a dual criminality analysis. The difference between
17 that case and this case is that Mr. Arambasic had already
18 been convicted. He had been convicted in absentia, and he
19 was being extradited to go back and face the sentence for
20 that.

21 The Government says, "Well, the legal analysis is
22 the same." But there is a difference. In this case, we're
23 arguing the statute of limitations has passed for some of
24 these crimes, that she wasn't involved in some of these
25 crimes, and that the treaty doesn't allow her to be

1 extradited for them.

2 So we do need to analyze what -- what she did that
3 the Government has shown probable cause to believe so that
4 we can know what she could go get prosecuted for.

5 In the case in South Dakota, it was already a
6 fait accompli. He had already been convicted. The Court
7 said, okay, he was convicted of events that constituted
8 murder and arson. And so there's no information there that
9 there was a statute of limitations problem.

10 So I think the Court was very careful there to
11 make sure that the evidence actually matched what he could
12 be charged with. But it is a different posture, because
13 it's already been done. So he's -- there's no danger that
14 he was going to go back and be charged with the things he
15 couldn't be convicted of under the statute, because he had
16 already been convicted.

17 I want to go back briefly on a few of the points
18 that the Government made earlier on the fact -- the question
19 of whether this defendant has actually been charged and
20 whether that question has been met. I do think the *Emami*
21 case that the Government cited is distinguishable and I did
22 what I could to distinguish that in my brief.

23 What is noteworthy there is the -- the Court
24 mentions, "Well, the defendant gets the documents listed in
25 the treaty and so that's how you know what you're going to

1 be charged with."

2 As you know, I filed a motion for discovery to get
3 the rest of the documents that might have been used for the
4 arrest warrant. The government denied that motion. The
5 Government agrees they haven't given us all the documents
6 that might exist to support these charges. So we're left
7 with the five witnesses that the Government gave us, a
8 summary by the prosecutor, and I think it's unfair to have
9 this defendant simply go face the possibility of being
10 charged in Bosnia with crimes that are not covered by the
11 treaty, when we didn't even get all the documents that the
12 treaty says -- I believe the treaty says we should get. We
13 should get all of the warrants and depositions that were
14 used -- all the evidence and depositions that were used to
15 get this arrest warrant.

16 The Government also says, "Well, this would be
17 ridiculous. Bosnia would be a -- the United States would
18 become a haven for people from Bosnia. They could never get
19 sent back there."

20 Really, what would occur, Your Honor -- or what
21 could occur, Your Honor -- is the Government could enter a
22 new extradition treaty with Bosnia and other countries so
23 that this old 1902 treaty wasn't any longer hampering them.

24 There's nothing that prevents the Government from
25 getting a treaty that has more modern provisions, which

1 would be that they can extradite people based just on
2 warrants and not indictments.

3 But most of that is in the brief already,
4 Your Honor.

5 You asked about the *Veletic* case, and I can give
6 you a copy of that. It is a case where the defendant was
7 convicted in absentia and --

8 THE COURT: I think you should supplement the
9 record, since you referred to it and I couldn't find it in
10 there.

11 MS. HAY: I can make this Defendant's Exhibit --

12 THE COURT: Well, you can simply file it later.
13 You don't need to do it today.

14 MS. HAY: Okay. It's from the District of
15 Minnesota.

16 So what -- I think what the Government and I
17 agreed on in -- in understanding what kind of crimes could
18 be extraditable is that this is not a treaty that includes
19 dual criminality as part of the main offenses for which you
20 can extradite somebody. It's a list treaty, and so you have
21 to extradite somebody for a crime listed there.

22 I hadn't actually analyzed Your Honor's question,
23 which was what about dual criminality for that second point
24 of participation, and we can certainly go back and look at
25 that.

1 The Government says they didn't find any cases
2 addressing that. I don't think it alters the analysis very
3 far, because it still has to be participation in one of the
4 listed offenses.

5 So we still get back to the fact that there's a
6 list.

7 As I pointed out in my brief, there's a way to
8 change that list. It's not by simply determining, well,
9 maybe a new crime that we've invented now should be
10 considered there. It's to amend the treaty. And I gave an
11 example. Great Britain amended their treaty. They had a
12 similar list of murder, arson, rape, and they amended their
13 treaty to include abortion. Some people might argue, well,
14 abortion is another form of murder, so you could just
15 extradite somebody for that. They didn't allow that to
16 happen in that case. The -- Great Britain just amended
17 their treaty to include a new crime.

18 That's equivalent to what the Government is trying
19 to do here. They're trying to say, "Well, war crimes are
20 just really the same as murder, so let's just extradite for
21 war crimes."

22 I believe what the case is saying is it doesn't
23 have to have the same name. You have to extradite for
24 murder.

25 THE COURT: Well, you agree that war crimes, the

1 statutes in Bosnia, includes, as part of the description, at
2 least as to prisoners of war, murder -- and as to civilians,
3 I think it says "resulting in death and attack on civilian
4 population resulting in death" -- that those descriptions
5 certainly are analogous to murder. Even, though, the name
6 "war crime" is not specifically listed, is your argument
7 because it's called "war crime," and "war crimes" aren't
8 listed, she can't be extradited at all? Or is your argument
9 if there's going to be extradition it can only be for
10 murder?

11 MS. HAY: Your Honor, I'm making both arguments.

12 THE COURT: Both arguments, okay.

13 MS. HAY: First, she shouldn't be extradited at
14 all, because the statute requires that the Government
15 provide a complaint which covers a crime provided for in the
16 treaty that's in 18 U.S.C. §3184 which says they have to
17 have a complaint for a crime provided in the treaty. My
18 argument is this isn't a crime provided for in the treaty.

19 If the Court were to disagree with that, then I
20 think the -- the next step is to say, "Well, if you're going
21 to look at the elements of this and not just the name, then
22 she can only be extradited for the portions which, in fact,
23 are murder. They're attempting to extradite her for attack
24 on civilian populations, settlement, civilians, or persons
25 unable to fight, which results in death, bodily injury, or

1 serious damaging of health.

2 I believe that the grave bodily injury and
3 damaging of health would be too far under this treaty.

4 THE COURT: Could be attempted murder, couldn't
5 it?

6 MS. HAY: Yes, Your Honor. I guess my argument
7 there is the statute of limitations has passed for that. So
8 I guess we'll have to address that in a moment.

9 In addition, attack on civilian population, that
10 doesn't necessarily include the mens rea of first degree
11 murder. It has to be intention to kill someone.

12 So the extent that could be war crime -- I mean,
13 war time activity where somebody is fighting a battle and
14 you're attacking a settlement and it results in death, there
15 could be a recklessness involved there that's not the mens
16 rea that the Government has to prove.

17 So, to the extent that they have evidence -- and
18 Your Honor, I believe they have set forth some evidence here
19 that the Government could list for us to try to show which
20 of this meets the mens rea for first degree murder. I
21 pointed out the execution-style section as one example.

22 But to just -- just extradite her for the war
23 crimes when they include so many -- so many offenses that
24 are not in the treaty, I don't think would be right.

25 Second part of that is to attack without selecting

1 a target by which a civilian population is harmed. Again,
2 that's just too broad.

3 The third part is depriving another person of
4 their life, intentional infliction of severe physical or
5 mental pain or suffering, inhumane treatment or et cetera.
6 So that's --

7 THE COURT: Well, they're only charging in (a) and
8 (b).

9 MS. HAY: It's (a) and (b) of War Crimes Against
10 Civilians.

11 THE COURT: Right. And same under the Prisoners
12 of War?

13 MS. HAY: It's (a) under War Crimes Against
14 Prisoners of War. I'm reading from page 15 of their
15 surreply. Not actually from the statutes. I believe
16 they're charging her with War Crimes Against Prisoners of
17 War under (a).

18 THE COURT: Now, I think -- I was actually going
19 to ask that question, because I think that they're charging
20 under (a) and (b), under both statutes. So I need to --

21 MS. CHANG: Your Honor, if I may, I sought
22 clarification from the Bosnian prosecutor's office about
23 this discrepancy. And the Bosnian prosecutor confirmed that
24 Ms. Handanovic is charged only under 175(a). That's War
25 Crimes Against Prisoners of War Article 175(a) and not (b).

1 There was a -- it was a typographical error in the
2 first -- that first document. But in the -- in the
3 documents from the Court, from the Bosnian Court, you'll see
4 that the Court mentions that she is charged only under
5 175(a) and not (b).

6 THE COURT: How do we deal with that? The warrant
7 lists both. You're saying that the warrant is inaccurate?

8 MS. CHANG: Your Honor, our position is that the
9 warrant, as we mentioned in our briefing, is not the
10 charging document. It just basically authorizes her to be
11 brought into custody.

12 THE COURT: So you're saying that according to the
13 charging document, which is the Court's order, it's only
14 subsection (a)?

15 MS. CHANG: Correct, Your Honor.

16 THE COURT: Okay. Okay. Sorry. Ms. Hay, go
17 ahead.

18 MS. HAY: Your Honor, I hadn't heard, perhaps, the
19 Government's statement that they're not relying on the
20 warrant, they're relying on the Court's charging document or
21 the Court's order taking her into custody. I would argue
22 that under *Sacirbey* that's not really sufficient; that, in
23 fact, they have to have a warrant for arrest and that the
24 Court's order taking her into custody is a limited order.
25 It's not actually a warrant of arrest.

1 I don't know any cases that say that the Court's
2 order itself is sufficient. So as another argument about
3 the sufficiency of their evidence, I would keep that there.

4 MS. CHANG: Your Honor, if I may clarify?

5 The arrest warrant from the -- the Government's
6 position is that the arrest warrant as a requirement of the
7 treaty has been supplied. The arrest warrant is a writ that
8 authorizes law enforcement officers to take Ms. Handanovic
9 into custody.

10 That is all that the treaty requires.

11 THE COURT: I understand your position.

12 MS. CHANG: Thank you.

13 MS. HAY: Your Honor, there's so many different
14 cases we've all cited. I think the one case that I pulled
15 out recently to just try to figure out what -- what would be
16 the right model is one we cited earlier called *Man-Seok*
17 *Choe* -- M-A-N, hyphen, S-E-O-K, second word, C-H-O-E --
18 versus *Torres*. It's 525 F. 3d 733. It's a Ninth Circuit
19 case from 2008. It's not addressing this treaty, but I
20 found it had a number of the same issues in it that I
21 thought might be useful.

22 One, it addresses the statute of limitations in
23 tolling. The defendant in that case had left his -- left
24 the country, and the Court found that the statute of
25 limitations was tolled.

1 In that case the defendant was stopped at the
2 airport, questioned about the crime, was released, and then
3 slipped out of the country without his passport. And the
4 Ninth Circuit ruled that that was enough evidence of flight.

5 In this case, Your Honor, the Government has the
6 burden of proving the defendant fled Bosnia with the intent
7 of concealing herself and evading indictment, and I don't
8 believe Government has met that burden in any way.

9 As pointed out, hundreds of thousands of people
10 left Bosnia in 1995 in that time period because it was a
11 war-torn country. She was 23 years old. Her sister
12 testified that she was trying to go to Germany to meet up
13 with her sister, but Germany at that time was not accepting
14 refugees. She went to Austria, applied for refugee status
15 in the United States, and the Government submitted the
16 document that shows she came mere.

17 THE COURT: I'm sorry to interrupt you. A
18 question just came to my mind. It was not clear to me, from
19 what I read, whether her entire family was in the U.S. or
20 has come to the U.S., or whether she still has family in
21 Bosnia.

22 MS. HAY: Your Honor, her parents still have a
23 house in Bosnia. Her parents are still there and her
24 brother is there.

25 THE COURT: Okay.

1 MS. HAY: If I could find the page number in
2 the -- in the Government's submissions, they mentioned
3 speaking with her brother, talking with him, to find out
4 where she was in the United States.

5 THE COURT: Right. That's true.

6 MS. HAY: Your Honor, it's further evidence she
7 wasn't fleeing from Bosnia. We heard testimony from her
8 sister, and submitted it as one of my exhibits, the refugee
9 travel document, which shows that during the time the
10 statute of limitations had not tolled she returned to
11 Bosnia.

12 So the Government is arguing that as of 1995 she
13 had fled; but, yet, she was back in Bosnia.

14 And Government's Exhibit C -- well, Government's
15 Exhibit 11 has in it a number of pages, at which page 6 is a
16 1997 license that Ms. Handanovic obtained back in Sanski
17 Most, in her country, when she returned during that period
18 where we submitted the travel documents. She returned back
19 to her own town. She got an identity document there under
20 her own name. And this was for business purposes or other
21 purposes because her family still had a house there.

22 So during the time the Government is saying she
23 fled, she's, in fact, right back in her own town, talking to
24 the Government, and even has an identity document created.

25 So there's not only no evidence that she fled

1 Bosnia with an intent to avoid indictment, she clearly went
2 back to Bosnia during the time of the statute of
3 limitations. She returned again in 200 -- I think it was
4 3 -- for her sister's wedding.

5 The Government mentioned something about name
6 changes. She officially changed her name upon citizenship,
7 as one's allowed to do, so that her nickname Sammy, short
8 for Rasema, became her first name, and Rasema became her
9 second name. That's on the documents. And then her last
10 name, of course, changed when she was married. None of
11 those are evidence of hiding identity.

12 And, in fact, the Government's file, as we noted
13 in our brief, has a number of documents in her official
14 record that show each one of those name changes. So these
15 weren't hidden changes. These were official changes.

16 For that reason, Your Honor, and because the
17 Government didn't put in any evidence that Ms. Handanovic
18 had any awareness at all of the prosecutions that were
19 beginning in Bosnia when she left the country or that she
20 would have reason to know about them, I submit the
21 Government failed to meet its burden of showing that she
22 fled the country with intent to -- of avoiding the
23 indictment.

24 The Government says this is a mass murder and
25 everyone should know that they would likely be prosecuted.

1 I think that's an unfair characterization of a wartime event
2 over a single day when a soldier follows the orders of a
3 commander, as all of these witnesses said.

4 So this isn't the same as somebody who went to a
5 school with a rifle and mowed people down and wouldn't know
6 they would be prosecuted. This is an entirely different
7 matter as that of a foot soldier in the Army, Your Honor.

8 So back on the tolling of the statute of
9 limitations, the Government, I don't think, met that burden;
10 and, therefore, we have to be able to identify which crimes
11 the defendant can be extradited for and which not.

12 I know the Government continues to argue that the
13 rules of specialty isn't even something we should bring up
14 here, but in *Man-Seok Choe* -- if I'm pronouncing it right --
15 the Ninth Circuit case I was just mentioning -- they also
16 just note that under the rules of specialty they need to
17 identify the crimes because of the statute of limitations
18 and make sure that the person is only extradited for the
19 crimes that are allowed under the treaty.

20 That's not to say that we can raise any objections
21 right now to what Bosnia is doing in this Court. We have to
22 wait until she gets to Bosnia. But certainly this Court
23 should follow the idea that under the treaty one should only
24 be extradited for crimes that are permissible, that are not
25 barred by the statute of limitations, that are listed in the

1 treaty, and the Court should list those crimes in the
2 certification. That's what the rule of specialty is about.

3 This *Man-Seok* case also talks about dual
4 criminality; when a treaty allows dual criminality and when
5 it doesn't. And, of course, the Government's position in
6 our case is that the treaty does not involve dual
7 criminality and they should just follow the list. Which, I
8 agree that the list is what controls here.

9 I think one of the confusing points is that
10 sometimes the distinction between a list treaty and the
11 other form of treaty is called a dual criminality treaty.
12 So there's that analysis.

13 And then there's also the question about whether
14 the treaty itself has language in it that has some
15 requirement that the crime be both here and in the -- in the
16 United States and in the other country.

17 I pointed out a number of cases that say that this
18 treaty also requires the Court to do a dual criminality
19 analysis, because, first, you have to follow the list, and
20 then you have to make sure it's a crime to both
21 jurisdictions.

22 I think the Government's point is well taken, that
23 if you follow the list, that it collapses the analysis,
24 because the parties have already decided that these crimes
25 are crimes in both jurisdictions.

1 Again, that gets back to the point that you have
2 to have a crime on the list. You can't extradite for a
3 different crime.

4 Your Honor, the Government suggested that maybe
5 the Court could solve the question of certification by just
6 saying that she could only be convicted if there's at least
7 one murder involved. I don't know of any precedent to limit
8 the certification that way. The cases that I've seen that
9 limit the certification like this *Man-Seok* case in -- there
10 were several others that I listed in my brief that I could
11 try to pull back up, where the Court said, "Let's limit the
12 certification," they are trying to limit the crime that she
13 could be charged with so that it fits the statute.

14 The Government sounds as if they're saying, well,
15 as long as one element is murder, she could be charged with
16 everything else. As long as there's one murder, go ahead
17 and put in evidence of harm, go ahead and put in evidence of
18 attack on civilian populations, or whatever Bosnia wants in
19 that country. I think the requirement is it be listed
20 specifically what can she be -- what can she be charged
21 with? And we should list the exact murders. And that's the
22 Government's burden of proof. And I don't think -- I don't
23 think they waded through this evidence to do that.

24 Your Honor, if you'd like further briefing, I
25 would be willing to go through and put together what I think

1 the witness statements show. I've done it to show which of
2 the witness statements of A, B, C -- A, B, D, E, and O
3 actually place Ms. Handanovic at a certain place before or
4 after alleged motivating factors are stated such as that
5 Samko was injured, and the Court can then determine, well,
6 which of these actually should be charged as murder.

7 Because the way I read this now is there's 22
8 people, maybe 19 people, maybe more, that are either injured
9 or harmed, and they're seeking to extradite her for all of
10 that. And the specific witness statements don't match up to
11 that.

12 THE COURT: Well, she makes a good point that
13 there seems to be discrepancies here between the number of
14 potential victims killed or injured and things don't match
15 up.

16 If -- assuming that she's right, that the
17 extradition here has to be limited to the crimes listed,
18 therefore it must be limited to murder or attempted murder,
19 depending on the statute of limitations, what, then, should
20 the certification order read? Shouldn't it read: Yes, you
21 can extradite for those crimes listed in the treaty, namely
22 murders or attempted murders? And can you leave it wide
23 open when you've got a problem with discrepancies as to who
24 you're really talking about as potential victims?

25 Either one of you is fine. Go ahead.

1 MS. CHANG: Your Honor, I -- if I'm understanding
2 Counsel correctly, she is stating there's a discrepancy
3 based on the arrest warrant, the numbers that she finds in
4 the arrest warrant versus --

5 THE COURT: Well, she's finding other
6 discrepancies, though. She's finding -- I tried to write it
7 down. Although, she went through it pretty fast. Between
8 the warrant with the prosecutor's summary, and then some
9 other evidence listed on page 277, which is --

10 MS. HAY: There's a statement by an investigator
11 who's listing the type of crimes that had been discovered.

12 THE COURT: Okay. You have an investigator
13 saying -- having one count, the prosecutor having another
14 count, and the warrant, obviously, you have, yet, a third
15 count. Is that -- am I summarizing it correctly?

16 MS. HAY: Yes, Your Honor.

17 THE COURT: Which is the page with the
18 prosecutor's statement on it? Do you have that?

19 MS. HAY: I have it at page 27.

20 THE COURT: Okay.

21 MS. HAY: They don't actually count the number of
22 civilians. It's a list of names. So I added -- I counted
23 them up.

24 THE COURT: Okay.

25 MS. CHANG: Well, Your Honor, the arrest warrant,

1 as you know, the Government has stated its position on that,
2 it -- it is not a comprehensive document as to what she's --
3 which offenses, in particular, she is being -- sorry, which
4 deaths, in particular, she's being charged with committing.

5 The arrest warrant was the authority given to law
6 enforcement officers to take her into custody.

7 The Government submits that the count in the
8 prosecutor's affidavit, which is the actual request for
9 extradition, would be the authoritative document, as to the
10 deaths for which she sought -- deaths and attempted murders
11 for which she is sought.

12 And I did conduct a count of all the names. That
13 was a while ago, Your Honor, but I do believe it does come
14 up to 22 individuals dead and four injured.

15 MR. ATKINSON: Judge, I might add that this has
16 been an organic process. This has been an ongoing process.
17 When one looks at the date of the warrant and then moves
18 forward, you'll see that things have clarified. And it
19 makes logical sense to rely upon the latest-dated document,
20 which is, I believe, the prosecutor's statement.

21 In any event, the prosecutor's statement ought to
22 be the most authoritative. There are cases that hold that a
23 sworn prosecutor's statement summarizing the evidence, such
24 as we have here in -- in tab 5, before we get into the
25 exhibits appended, is sufficient, predicated a -- an

1 extradition in and of itself, you know, absent any witness
2 depositions or witness statements. So that's what I'd rely
3 upon.

4 It's not unusual in a -- in an investigation for
5 the facts to change as the investigation proceeds.

6 THE COURT: Well, the investigation should have
7 been completed by the time you're putting together a request
8 for extradition. I mean, you're not doing the investigation
9 here in the United States. You're simply relying on what
10 was done prior to the time Bosnia submitted the request and
11 then you submitted it here.

12 So I'm not sure I understand you when you say
13 things are ongoing or progressing.

14 MR. ATKINSON: Well, the warrant predates the
15 prosecutor's statement by a -- by a fairly significant
16 period of time, Judge Stewart, so --

17 THE COURT: Yeah. All right.

18 MR. ATKINSON: So the -- the warrant represents
19 the facts as they were then understood. If I'm not
20 mistaken, I think the judge's detention order post-dates the
21 original prosecutor's warrant. And I might add that there's
22 simply no distinction between a court order such as the
23 order issued by Judge Jukic ordering someone to be taken
24 into custody, and a warrant. That's exactly what a warrant
25 is. It's a judicial order requiring somebody to be taken

1 into custody. It certainly doesn't set the parameters for a
2 charge.

3 And then we have the prosecutor's statement,
4 which, you know, makes -- makes sense, makes logical sense
5 that that would be the -- you know, the facts as they were
6 then understood when she executed the affidavit.

7 I might --

8 MS. HAY: Can we just clarify those facts? I
9 believe that Judge Jukic's opinion, which is under tab 2 --
10 Exhibit 2, tab 5, is dated December 21st, 2009, and the
11 prosecutor's --

12 THE COURT: Summary?

13 MS. HAY: -- statement, summary, is July 7th,
14 2010.

15 So I guess this is part of the issue, is where --
16 what is the charging document that she's been extradited on?

17 She's -- we heard the warrant that I was looking
18 at originally, tab 12, is not sufficient. That only lists
19 six people, I believe. And so now we hear that's not really
20 enough. We can rely on Judge Jukic's opinion. That's from
21 December of 2009. I can't recall if I listed -- if I went
22 through and counted all of the people that were described in
23 this, but I don't believe it has enough detail to, in
24 itself, define what she should be charged with.

25 And then now we're hearing, well, we could rely on

1 the prosecutor's statement from July of 2010.

2 THE COURT: Well, the prosecutor's statement is
3 actually the request for extradition. That's what it's
4 labeled; right? That's the one dated July 7th, 2010.

5 To my mind, that is the request for extradition
6 and that is the document that we all have to work with.

7 MR. ATKINSON: Right, Judge. And, again, to
8 emphasize, this has been an organic process. The facts
9 contained in the first warrant, back at tab 13, I think,
10 which is the, you know, first dated document that we're
11 discussing here, relate to facts as they were then
12 understood. And that was a couple years ago.

13 They proceeded to get a judicial order. And,
14 quite frankly, this judicial order requiring detention,
15 although it may not be apparent from its face, unless you
16 really get into the weeds on this, Judge Stewart, if you
17 read it very carefully, you'll see that essentially what
18 they're requesting is the authority to issue an
19 international warrant.

20 THE COURT: I see that. The judge had to find
21 that this person was actually a fugitive of another country
22 in order to authorize the warrant.

23 MR. ATKINSON: Right. There wasn't a separate
24 piece of paper, that I'm aware of, that constitutes a
25 warrant. It's just necessary in order to put it into

1 Interpol and things of that nature.

2 But that, Judge Jukic's order, represents the
3 facts as they were then understood.

4 And, finally, we have the last dated document,
5 which describes the facts as they're finally understood.
6 It's not unlike a case here in the United States in which a
7 search warrant is sought at the beginning of an
8 investigation based upon facts as they are then understood,
9 and then, as the investigation proceeds and the facts
10 sharpen and the understanding of the facts becomes better
11 and more accurate, a final affidavit, perhaps in support of
12 a complaint for an arrest, may differ markedly from the
13 facts as they were understood at the beginning of the
14 investigation.

15 I would not --

16 THE COURT: Except, normally, you have a --
17 everything is the same. You've got an arrest warrant for
18 certain charges. Those charges, then, are the same as the
19 charges for which extradition was requested.

20 Here you have the same charges. The problem is
21 you have different supporting allegations, I guess, for
22 those charges.

23 The charges remain the same. War Crimes Against
24 Civilians, War Crimes Against POWs -- well, even then, I
25 guess, you switched, though, and deleted one of the

1 subsections in one of the statutes. But what's changed are
2 the specific allegations underlying those charges. Am I
3 right?

4 MR. ATKINSON: Well, to reflect the facts as
5 they're understood at various phases during the
6 investigation.

7 Judge Stewart, what's required is a warrant and
8 statements of witnesses to support extradition, essentially.
9 And, again, our position is that this is a unit that the
10 crime for which Ms. Handanovic is sought is a unitary crime.
11 It's a unitary crime involving multiple victims.

12 THE COURT: Yes. But the problem is the treaty
13 doesn't say you can extradite for a unitary crime of
14 multiple victims. That's not what the treaty says. The
15 treaty says you can extradite for murder or attempted
16 murder. And those are, as you have properly noted,
17 incorporated as -- as conduct or acts chargeable as war
18 crimes.

19 I mean, you're right about that.

20 MR. ATKINSON: Well, the answer -- the answer,
21 then, is the last dated document, which is actually the
22 request for extradition, contains the facts as they were
23 then understood, and I -- Bosnia is bound to those facts
24 now. And if the Court wants to include the names of the
25 victims and the precise number, then --

1 THE COURT: Well, I don't know if I want to. It's
2 a matter of what the treaty is going to require.

3 MR. ATKINSON: If the Court believes that that's
4 necessary.

5 One point I wanted to make, Judge Stewart, and
6 perhaps this might be a good time to do that, with respect
7 to the analogy, the degree of akinness, as it were, between
8 the war crimes statutes and the murder, as we understand it
9 here in the United States, I point the Court to page 32
10 where the Bosnian prosecutor says in the second -- the
11 second paragraph, in number six, "Such crimes can only be
12 committed with intent," referring to crimes under Article
13 173 and 175.

14 So when one toggles back to Sections 173 and 175,
15 in which the Bosnian statutes are set out, one needs to take
16 that into consideration that in -- for example, in
17 173(1)(a), when there's a description of an attack on a
18 civilian population which results in death, that's which
19 intentionally results in death. And, similarly, in 175,
20 even though murder is parenthetically mentioned there,
21 there's also an intent requirement.

22 I also would like to point out to the Court that
23 this debate about whether an individual can be prosecuted in
24 Bosnia in absentia seems to be contradicted conclusively by
25 Ms. Budimir's affidavit in the paragraph immediately above

1 the bolded War Crimes Against Civilians and War Crimes
2 Against Prisoners of War.

3 If you read that paragraph, Judge Stewart you'll
4 see exactly what I was referring to earlier and was unable
5 to put my hand on it earlier, where Bosnian law provides no
6 indictment shall be issued, the suspect has not been
7 questioned. Since the suspects aren't in the -- in Bosnia
8 and Herzegovina, they can't be questioned, and therefore no
9 indictment would be raised.

10 Now, if there was some case somewhere where
11 someone was prosecuted in absentia, in Bosnia, I would wager
12 they will find that it predates the enactment of that
13 statute.

14 THE COURT: Okay.

15 MS. CHANG: Your Honor, if I may address your
16 question to what the treaty requires in terms of
17 certification? A couple -- one prefatory mark, and that is
18 the list treaty, it is true that it lists offenses by name,
19 but the Supreme Court is clear that those named offenses
20 indicate categories of offenses, and that the -- the Supreme
21 Court following the treaty construction principles of
22 liberally construing treaties has established that treaties
23 should not be construed over technically and strictly, but
24 should be construed to enlarge the rights of the parties and
25 to further the goals of the extradition treaty, which is to

1 allow for extradition of individuals.

2 Now, with that as a preface, the various cases
3 that Ms. Hay had cited and which the Government analyzes on
4 pages 13 and 14 of our surreply, opposition of
5 extradition -- to extradition demonstrate the long track
6 record of extradition magistrates certifying individuals for
7 extradition for the offenses for which extradition is
8 sought. And that has included certifying *Pajkanovic*,
9 mentioned on page 13, for aggravated robbery, the offense
10 for which extradition was sought, even though aggravated
11 robbery, by its terms, was not included in the list.

12 It also includes certification for *Zelenovic* for
13 attempted homicide, the offense for which his extradition
14 was sought, even though the words "attempted homicide" are
15 not included in the list.

16 Also, in *Arambasic*, the case that Mr. Atkinson
17 analyzed in some depth, the magistrate, as well, there,
18 stated that Mr. Arambasic is to be extradited on the charges
19 for which extradition is sought. And that is because the
20 only charges that -- that any fugitive is facing are those
21 charges pending in the foreign country.

22 THE COURT: Well, what I hear you saying, though,
23 is the only charges for which they're sought in Bosnia --
24 which is sought in Bosnia, really is murder and attempted
25 murder. That's equivalent to murder or attempted murder.

1 So the certification could very well list War Crimes Against
2 Civilians or Prisoners of War and we will presume that means
3 only charges of murder and attempted murder unless the Court
4 finds that attempted murder was tolled by the statute of
5 limitations. Then you'll have some qualifying statement
6 that it will be war crimes premised on the actual killing,
7 as opposed to any attempted murder.

8 MS. CHANG: That's correct, Your Honor.

9 THE COURT: Okay. Yes, Ms. Hay.

10 MS. HAY: Just responding to that argument,
11 Your Honor. The case that the Government cited, aggravated
12 robbery was not in the list, but robbery is in the list.
13 Attempted homicide is not in the list, but attempted murder
14 is in the list. Those are very equivalent. I think that's
15 what the Supreme Court was talking about when they said the
16 actual name is not as important as the offense. But the
17 Government stretches far to say that war crimes is the same
18 as murder.

19 I think the way to address this -- first, of
20 course, I don't think the Court should certify any
21 extradition, because war crimes is not listed in there. If
22 the Court were inclined to do that, then you should
23 extradite only on the offense of murder or attempted murder
24 if the statute of limitations were not tolled, and list the
25 individuals that the defendant is accused of murdering.

1 That's what the Ninth Circuit did -- the District
2 Court in the Ninth Circuit did in the case -- I'll say it
3 wrong now. It's not *Arambasic*. It's the other one.

4 *Artukovic*. So in that case they specifically listed murder
5 and then, based on the evidence the Government provided,
6 describes the area of the people who had been murdered.

7 That's, I believe, what should happen in this
8 case. If you're inclined to even go that far.

9 I did want to point out that the -- excuse me --
10 the statute, 18 U.S.C. § 3184 requires that there be a
11 complaint made, under oath, charging a person with having
12 committed a crime provided for by the treaty.

13 And so what I'm understanding is the complaint
14 under oath is the complaint of Mr. Atkinson, which is
15 document docket 1 in this case.

16 This is a complaint that's charging her with
17 committing a crime that's supposed to be provided for in the
18 treaty. My argument is that this crime -- war crimes is not
19 provided for in the treaty, so, of course, the Court should
20 just deny extradition.

21 To the extent that you want to take a view that is
22 analogous to murder, this is the document I think we have to
23 rely on under the statute. This document refers to the
24 warrant for arrest from September of 2009. It doesn't
25 discuss the judge's -- as far as I can see, the judge's

1 statements. I mean, this says that a warrant for her arrest
2 was issued September 21, 2009, by the prosecutor's office.

3 That's the document I had been relying on, which
4 only listed six or so individuals.

5 The Government now says that's merely not what
6 they're relying on. But that's what's stated in
7 Mr. Atkinson's complaint.

8 This lists the fact that they're relying on. It
9 says there were 16 civilians killed. That's what I'm
10 disputing. I don't believe I've seen evidence that
11 Ms. Handanovic should be held culpable for 16 civilian
12 deaths. There's just not evidence of that.

13 It refers to her alleged participation of
14 firing-squad-style execution of three HVO soldiers. If
15 there's evidence of that, that would be an example,
16 Your Honor, that the Court could formulate an extradition
17 for murder for that offense. That's in the Government's
18 complaint.

19 And I just -- I don't see the other -- other bases
20 for the kind of charge the Government is asking for here.

21 So that document, that's the complaint, that's
22 what we have to rely on under the statute, and I think that
23 complaint is insufficient based on all the arguments we've
24 made. The 1902 treaty should not be continued indefinitely;
25 that the Government should go get a real treaty ratified by

1 the Senate if they want to conduct these kind of
2 extraditions.

3 To the extent the Court is going to rely on it,
4 you should rely on the actual terms of the treaty, and that
5 list does not include war crimes.

6 If Your Honor would like post-hearing briefing, of
7 course, we would be happy to brief additional questions if
8 it's something that would be of use.

9 THE COURT: Do you have anything else?

10 MR. ATKINSON: No, Your Honor.

11 THE COURT: All right. Obviously, I'm taking this
12 under advisement, and I'll be issuing a written opinion and
13 order. If I decide I want supplemental briefing, I'll let
14 you both know.

15 At this point I am expecting a copy of that
16 *Veletic* case that you rely on. You can simply file that as
17 a supplement to your -- to your memorandum, since it's just
18 a case.

19 Is there anything you were going to speak on,
20 Mr. Atkinson?

21 MR. ATKINSON: I'm sorry. I didn't hear you,
22 Your Honor.

23 THE COURT: I'm sorry. Was there something you
24 said you wanted to provide? Now I don't remember.

25 MR. ATKINSON: I think it was a -- the provision

1 in the prosecutor's affidavit relating to intent. I've
2 found that.

3 THE COURT: No. I think it is to support your
4 argument that among those who were indicted in July 1995 --
5 they included some low-level individuals --

6 MR. ATKINSON: Lower-level individuals.

7 THE COURT: -- that went to --

8 MR. ATKINSON: Yeah, we'll provide that.

9 THE COURT: Okay.

10 MR. ATKINSON: If I'm in error, I'll make sure the
11 Court understands that as well.

12 THE COURT: Okay. I would appreciate that.

13 All right. Thank you. It's been very helpful.
14 I'll try not to delay getting my decision out to you. If I
15 need something further, you'll hear from me.

16 MR. ATKINSON: Thank you, Your Honor.

17 MS. HAY: Thank you.

18 THE COURT: Court is in recess.

19 (Extradition hearing was concluded at 12:11 p.m.)
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CERTIFICATE

I hereby certify that the foregoing is a true and correct transcript from the stenographic record of the proceedings in the foregoing matter.

/s/ Jill L. Erwin
Jill. Erwin, RPR, CRR, CSR
OR CSR No. 98-0346

Date: 10/19/11